IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION — Case No. 1:17-md-2804

THIS DOCUMENT RELATES TO: Track Three Cases — Hon. Dan A. Polster

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- HIGHLY CONFIDENTIAL -
SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

Videotaped Remote Deposition of JAMES G. TSIPAKIS, held via Zoom videoconference, commencing at 1:07 CST, on the 17th of March, 2021, before Maureen O'Connor Pollard, Registered Diplomate Reporter, Realtime Systems Administrator, Certified Shorthand Reporter.

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None.

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None.

P R O C E E D I N G S

THE VIDEOGRAPHER: We are now on the record. My name is Chris Ritona. I'm the videographer for Golkow Litigation Services.

Today's date is March 17th, 2021, and the time is approximately 1:07 p.m. Central.

This remote video deposition is being held in the matter of the National Prescription Opiate Litigation in the United States District Court for the Northern District of Ohio, Eastern Division, Case Number 1:17-md-2804.

The deponent today is Jim Tsipakis.

All parties to this deposition are appearing remotely and have agreed to the witness being sworn in remotely.

Due to the nature of remote reporting, please pause briefly before

speaking to ensure all parties are heard completely.

Will counsel please identify themselves for the record.

MR. MOUGEY: This is Peter Mougey with Levin Papantonio representing the plaintiffs.

MR. BARNES: Robert Barnes with Marcus & Shapira representing Giant Eagle and the witness, Jim Tsipakis.

THE VIDEOGRAPHER: Thank you.

The court reporter today is Maureen Pollard, and she will now please swear in the witness.

JAMES G. TSIPAKIS,

having been duly remotely sworn, was examined and testified as follows:

EXAMINATION

BY MR. MOUGEY:

Q. Good afternoon, Mr. Tsipakis. This is Peter Mougey. How are you doing today?

A. Good. Good, thank you. How

are you?

Q. I'm doing well.

With a last name like Mougey, I think you and I can both sympathize with each other. Am I pronouncing it correctly, Tsipakis?

A. Tsipakis, yes.

Q. Tsipakis. Thank you.

Mr. Tsipakis, today you are appearing on behalf of Giant Eagle, correct, sir?

A. Correct.

Q. And HBC Service Company is a subsidiary of Giant Eagle, correct, sir?

A. Correct.

Q. So today when we use Giant Eagle I'm going to be referring to both Giant Eagle and HBC, unless you tell me that's improper or we should make a distinction between the two. Okay?

A. Yes.

Q. And, sir, you understand when you are responding to questions today that you are answering as if you were speaking for

Giant Eagle the corporation, correct?

A. Correct.

Q. And that's rather than you testifying on your own -- in your own personal capacity, correct?

A. Correct.

Q. And, Mr. Tsipakis, you've testified on behalf of Giant Eagle in this national opiate prescription litigation prior to today, correct?

A. Correct.

Q. So you're familiar with the process of testifying on behalf of the corporation, correct?

A. Correct, with the added remote, the added nuance of remote. The last time was in person.

Q. Yes, sir, we're all still getting used to that. One good thing is we all get to sleep in our own bed tonight, I guess, right?

All right. Mr. Tsipakis, I'd like to start off with just you and I agreeing on some vernacular or some

terminology. Okay, sir?

A. Yes.

Q. Now, if I ask you the term "red flag," have you heard of the term red flag in the context of dispensing controlled substances?

A. Yes.

MR. BARNES: I just -- Peter, I just caution the witness, don't include in your answers anything between attorney/client meetings and things of that nature. It would be excluding any privileged meetings or communications with counsel.

BY MR. MOUGEY:

Q. So red flags, do you understand what red flag is in the context of dispensing controlled substances?

A. Yes.

Q. And what is your understanding of the term red flag in the context of dispensing controlled substances?

A. Red flags are, as I would consider them, flags in general. Flags are

pieces of information to use when dispensing a -- assessing to dispense a particular medication.

Q. So when you say "pieces of information," explain to the jury a little more when we use the term red flag, what do you mean by pieces of information?

A. Well, they're screening tools, pieces of information, situational. It's basically information that is aware at the time of dispensing to be able to assess the prescription and dispense it appropriately.

Q. And when Giant Eagle is faced with a red flag at the time of a prescription being presented for controlled substances, is it appropriate for Giant Eagle to fill that prescription?

A. The prescription is filled by our registered and licensed pharmacists, so the pharmacist uses their professional judgment to fill -- or to fill or not fill a prescription.

Q. Yes, sir.

And in that professional

judgment, does -- with the pharmacist, does Giant Eagle have to answer any, I think your term was screening information prior to the controlled substance being dispensed?

A. Can you repeat that, please?

Q. Yes, sir.

Does any questions presented by a red flag need to be addressed and answered prior to a controlled substance, for example opiates, being dispensed at Giant Eagle?

A. Giant Eagle trusts the professional judgment of their pharmacists to use the information in front of them to determine whether to fill a prescription or not fill a prescription.

Q. Yes, sir. And I'm simply asking, is the obligation of Giant Eagle and its employees to be able to dispel any concern associated with a red flag before a controlled substance like opiates are dispensed?

MR. BARNES: I'm going to object for the record. Ask for clarification.

Are you talking about the pharmacist, or somebody else?

BY MR. MOUGEY:

Q. Go ahead and answer, Mr. Tsipakis.

A. From a Giant Eagle perspective, we provide the tools necessary for our pharmacists to be able to use their professional judgment.

Q. And, sir, when you say we provide tools necessary, you mean Giant Eagle, correct, sir?

A. Correct.

Q. So you'd agree that the pharmacists rely on the tools that Giant Eagle provides to be able to discharge their responsibility to dispel any questions associated with a red flag before dispensing controlled substances like opiates, correct?

MR. BARNES: Objection to form.

A. They're not exclusive. So Giant Eagle provides tools, for example a computer system for them to use, access to the internet so they can access screening

tools like prescription drug monitoring programs, the OARRS program, for example, in Ohio. So we provide access for tools that they use, that they may need, to be able to use their professional judgment to fill or not fill prescriptions.

BY MR. MOUGEY:

Q. Let's go back to the initial question I asked, which is relatively simple, I think.

Is it the responsibility of a Giant Eagle pharmacist to answer any questions presented by a red flag before filling a prescription for opiates or any other controlled substance?

A. It's the pharmacist's professional judgment on whether to fill or not fill a prescription, and they need to assess the information that they have in front of them at the time of dispensing, and clear anything that they need to clear before they fill that prescription.

Q. And by "clear," you mean answer any questions presented by a potential red --

or a red flag, correct?

A. That they deem -- that they deem appropriate and necessary, yes.

Q. So the simple answer to my question is yes, Giant Eagle pharmacists have to clear red flags before dispensing opiates, correct?

MR. BARNES: Objection.

Misstates his answer.

A. Giant Eagle pharmacists use their professional judgment, including whatever screening tools and information they need, to fill or not fill prescriptions, to choose to fill or not fill a prescription, including opiates.

BY MR. MOUGEY:

Q. I understand that Giant Eagle pharmacists use their professional judgment, and I understand that they use whatever screening tools Giant Eagle provides.

What I'm asking you for about the fifth or sixth time is, simply, is it incumbent upon a Giant Eagle pharmacist to answer red flags prior to filling a

prescription for opiates?

MR. BARNES: Objection. Asked and answered the fifth or sixth time -- five or six times.

BY MR. MOUGEY:

Q. Yes or no.

A. Red flags are not inclusive or exclusive on sole pieces of information that pharmacists need to fill or not fill a prescription. So pharmacists use their professional judgment, and if any questions come up that they feel are necessary to have answered, they do that with their professional judgment.

Q. And they have to do that, which is answer any questions they have regarding an opioid prescription prior to fill, correct, sir?

A. If a pharmacist has a question about a prescription, it is incumbent on them to answer their questions that they have prior to filling a prescription in their judgment.

Q. Mr. Tsipakis, as you testified

previously as we got started today, you have appeared in the corporate capacity on behalf of Giant Eagle before, correct?

A. Correct.

Q. And the prior testimony on behalf of Giant Eagle was in regard to suspicious order monitoring, correct, sir?

A. One of the topics, yes.

Q. Yes, sir.

And that Giant Eagle, at least for periods of time, was a distributor of opiates to its own pharmacies, correct, sir, amongst other drugs?

A. Giant Eagle -- well, let me -- so Giant Eagle, which class of opiates? Are you considering C2 opiates?

Q. I'm not asking anything specific. I did that on purpose to make it really nice and easy for you to answer.

So Giant Eagle distributed opiates of any kind to its pharmacies for a period of time, correct?

MR. BARNES: Peter, I'm going to interject now. I think some

limited question is okay here, but the Court's ruling and documents numbers 3329 and 3595 instruct that these depositions are not supposed to be repetitive or duplicative of prior 30(b)(6) depositions.

And you're correct, he was previously deposed in case track 1 extensively on distribution, so I hope we're not going into repetitive testimony.

MR. MOUGEY: I promise my questions will take a lot longer than your speech. So I'm just asking some preliminary questions.

BY MR. MOUGEY:

Q. Giant Eagle distributed opiates to its own pharmacies for at least periods of time, correct, sir?

A. Certain classes of drugs were by us and certain by McKesson.

Q. Thank you.

And Giant Eagle distributed Class 3 through 5 opiates or controlled

substances to its own pharmacies from -- up until 2014, correct?

A. Correct.

Q. And then in 2000 -- is it late 2015 or early 2016, Giant Eagle began to distribute Class 2 through 5 controlled substances to its own pharmacies, correct?

A. Correct.

Q. There was a period in '14 and '15 of a year, year and a half, two years where Giant Eagle did not distribute any controlled substances to its pharmacies, correct, sir?

A. That is not correct.

Q. All right. So did Giant Eagle continue to distribute Class 3 through 5 in '14 and '15 and the beginning of '16 to its own pharmacies?

A. Yes. Correct.

Q. So in late 2015, early 2016 Giant Eagle began to include Class 2, like OxyContin, and at that point hydrocodone combination products to its own pharmacies, correct?

A. Which year did you say, please?
Q. Late '15, early '16.
A. I believe that's correct.
Q. Okay. Now, if I use -- let me give you two terms and see if you and I can continue down kind of defining some vernacular between the two of us.
If I use the term total system or multiple layers in regard to HBC's duty to monitor dispensing of controlled substances, are you familiar with those terms?
A. Yes.
Q. And if you and I use the terms total system or multiple layers, explain to the jury what you mean by those terms.
MR. BARNES: Object to the question as being violative of Court's instructions to not repeat prior deposition testimony.
The witness was extensively deposed for seven hours on distribution out of Giant Eagle's warehouses, and I will instruct the witness not to answer questions that

go into distribution type issues for which he's already been deposed.

BY MR. MOUGEY:

Q. So what do you mean by multiple layers or total system, Mr. Tsipakis?

A. So if I can ask a question, am I answering the question or --

MR. BARNES: Peter, you need to clarify. If this relates to distribution, he's not answering.

MR. MOUGEY: Robert, I'm asking a couple preliminary questions to draw some distinction between distribution and dispensing, and I'm asking him if we use the terms total system and multiple layers what he's referencing. It's just a preliminary question, Robert. You've spoken more than I have at this point.

BY MR. MOUGEY:

Q. I'd ask, Mr. Tsipakis, that you please answer the question.

MR. BARNES: If it relates to distribution, I'm instructing the

witness not to answer. He's already been deposed.

BY MR. MOUGEY:

Q. What do you mean by the terms total system and multiple layers?

MR. BARNES: Jim, to the extent that this relates only to dispensing, you can answer the question. But if it relates to distribution for which you've already been deposed, do not answer.

BY MR. MOUGEY:

Q. Why don't you just answer just in regard to dispensing when you're talking about total system and multiple layers as Mr. Barnes suggests. Just tell us what part of the system is just dispensing when you mean total system and multiple layers?

A. So Giant Eagle, as you mentioned, we have our warehouse and we have our stores, so we have -- from a dispensing side we have different layers of controls, and pieces that we have in place to comply with the laws, but also to comply with a

system of security and safety and making sure our prescriptions are adequately dispensed and appropriately dispensed.

Q. Please explain to the jury when you say "different layers," what different layers in regard to dispensing are you referring to?

A. From a dispensing, I would say we have different controls and different levels of -- actually, I would say from a dispensing perspective we have different controls in place to ensure our prescriptions are adequately dispensed.

Q. And that's what I'm asking, sir. Would you please explain to the jury, of the total system and the multiple layers, what specific controls do you have in place to comply with the Controlled Substance Act in relation to opiates?

A. From a dispensing perspective, we have different controls. We have physical security controls, we have pharmacist controls, for example, we have audit controls, and etcetera. So those are the

different controls that we have. We have reporting controls. So all those controls together are used to monitor, certainly, and help us in dispensing our prescriptions.

Q. Now, you said "etcetera." I've got physical security, pharmacist controls, audit controls, and reporting controls. Any other controls as part of this total system or multiple layers as it relates to just dispensing?

A. Well, those are the main controls.

Q. All right. Let's go through -- when you say "main ones," I'd like a list so I know what we're doing, no etceteras, etceteras, or no these are the main ones.

What are our list of the controls that encompass the total system or multiple layers other than the four you just mentioned?

A. Can you repeat the question? What would you like me to say specially? What would you like me to answer specifically?

Q. I'd like to know the different categories or components of the total system or the multiple layers as it relates to dispensing with Giant Eagle fulfilling its obligations under the Controlled Substance Act?

A. So I believe I've answered there is the physical -- do you want me to go through each of the controls? Is that what you're asking me?

Q. I just want a list of the general categories. You said "etcetera," and I just want to have a complete list.

A. Sure. So there's the physical controls and security we talked about. There's the pharmacist controls.

Q. Got it.

A. There's the audit controls.

Q. Okay.

A. There's the reporting controls.

Q. All right.

A. There's controls from -- externally from Board of Pharmacy, DEA, McKesson at this time, or Cardinal, our

current distributors, so those are all the various controls that are in place.

Q. Okay. Let's go through each one of those, if we can.

Now, physical security, would you explain what you mean by physical security to the jury as it relates to dispensing and Giant Eagle's obligations under the Controlled Substance Act?

A. Sure. Physical controls, all of our pharmacies have alarm systems, monitoring, camera monitoring controls.

There is lockable cabinets and safes in our stores to secure controlled substances.

There's policies as well for control on access to the pharmacy and making sure the physical standards of security for the pharmacy.

So those are the physical controls.

Q. All right. How about the pharmacist controls?

A. So our main control is our

pharmacist, our pharmacists using their professional judgment and their training and their experience to be able to properly assess and dispense -- and appropriately assess and screen prescriptions for opiates, and decide whether to fill those or not, or that they're a legitimate prescription and whether they should be filled or they should not be filled.

Q. Now, what tools did Giant Eagle make available to pharmacists prior to 2013 to assist a pharmacist in making the decision to fill or not to fill a controlled substance, more specifically an opiate?

A. So Giant Eagle provided access to the internet for them to be able to do whatever research they needed to do plugging into the PDMP systems.

Pharmacists were given guidelines, again using their professional judgment, but guidelines and any information, whether it was continuing education or other programs, etcetera, to help them. But ultimately they're using their professional

judgment and their training.

And then anything that required an external or some sort of -- for example, the internet, then we made sure that they had access to that, or whether it was a module or screening pieces, etcetera, they had access to that.

Q. Now, did Giant Eagle have guidelines for the pharmacist in relation to their obligations under the Controlled Substance Act in relation to opiates prior to 2013?

A. Yes.

Q. And where would I find those?

A. So those guidelines, I believe, were provided for what we had. The guidelines, they were multiply reinforced over the years, and certainly they're not new, the guidelines are not new, they all basically follow the Controlled Substance Act and the requirements of the Controlled Substance Act.

Q. Now, you reviewed documents in preparation for today, correct, sir?

A. Correct.
Q. In fact, your counsel has provided a list of 200-plus documents that you reviewed in preparation for today, correct?
A. Correct.
Q. And you understand, sir, that part of your responsibility appearing as a corporate representative today is that you educate yourself, correct, sir?
A. Correct.
Q. And that includes, obviously, looking at documents, correct?
A. Correct.
Q. And then speaking or potentially interviewing other folks within Giant Eagle, correct?
A. Correct.
Q. Did you interview any other individuals at Giant Eagle in preparation for today?
A. Yes.
Q. And who were those individuals?
A. So I spoke to my -- various

folks. Do you need the exact names of the folks that I spoke to?

Q. Please, and their titles.

A. Okay. So in preparation George Chunderlik, who was part of our compliance team; Mike Chapel, who was part of our pharmacy operations team; Bob McClune.

Q. What department was Mr. McClune in?

A. At the time he was in analytics.

Q. Is he still employed with Giant Eagle?

A. In a different capacity, but yes.

Q. Okay. Anyone else?

A. No.

Q. So let's go back to the guidelines. Can you point me to a document that Giant Eagle had in writing, the guidelines for its pharmacist employees?

A. No.

Q. So when you're telling this jury that there were formal guidelines, what

are you referencing, prior to '13?

A. So what I'm referencing is from what I've spoken to my colleagues and others within the company, there was multiple cases at meetings, during conference calls, and things that were done across our stores across the years, and all of these guidelines were continually, nothing new, continually reinforced and discussed.

Q. Now, does Giant Eagle have a firm intranet?

A. Do we have an intranet? Yes.

Q. And by "intranet," I mean where only employees of Giant Eagle can access like a website that's only available for Giant Eagle information, correct? Are we saying the same thing?

A. Yes.

Q. All right. And so would Giant Eagle post important information like guidelines for controlled substances or opiates on its firm intranet?

A. On occasion, yes.

Q. And you couldn't find any

evidence of any formal written guidelines in relation to a pharmacist's obligations under the Controlled Substance Act in Giant Eagle's system?

A. No, but there's no requirement to do so.

Q. You couldn't find any presentation with those guidelines written down that were used to communicate Giant Eagle's obligations under the Controlled Substance Act regarding pharmacist employees?

MR. BARNES: Object to failure to state time period.

BY MR. MOUGEY:

Q. Prior to 2013.

A. No.

Q. And you reviewed e-mails in preparation for today, correct?

A. Yes.

Q. You couldn't find any guidelines in relation to Giant Eagle's obligations under the Controlled Substance Act regarding dispensing in the e-mail tracking?

MR. BARNES: Same objection.
Time frame.
MR. MOUGEY: Prior to '13.
A. There was e-mails I saw that certainly we had board inspections, DEA inspections during the time, and there was no issues flagged by any of the regulatory bodies during that time.
BY MR. MOUGEY:
Q. Right. But what I asked you was a little different. I'm asking you about written guidelines.
You didn't find any written guidelines in the e-mail traffic that you reviewed prior to 2013, correct, Mr. Tsipakis?
A. Not specific guidelines, but definite due diligence from corporate stores and vice-versa on different aspects of controlled substances. And certainly --
Q. You told me -- I'm sorry. Go ahead, Mr. Tsipakis, I didn't mean to interrupt you.
A. Go ahead.

Q. So you've pointed to DEA, you've pointed to audits, you've pointed to -- but you couldn't find any written guidelines for Giant Eagle communicating to its employees about their responsibilities under the Controlled Substance Act in relation to dispensing opiates, correct, sir?

A. Reissuing -- the guidelines that we issued in 2013 and beyond are basically the same guidelines from the Controlled Substance Act. Every pharmacist is aware of the Controlled Substance Act and the provisions within the Controlled Substance Act, and that's part of their professional judgment.

Q. So the answer is no, you couldn't find anything in e-mails, firm intranet, filing cabinets, anywhere at Giant Eagle any written guidelines regarding pharmacy employees' obligations under the Controlled Substance Act when dispensing opiates, correct?

A. The guidelines that you -- I'm sorry, could you repeat the question as far

as -- the guidelines are the guidelines from the Controlled Substance Act from the DEA, so certainly in 2013 we formalized some documents and certainly put them on an intranet, etcetera. But the guidelines hadn't changed. The guidelines are still the same.

Q. So prior to 2013, simply pharmacists and the pharmacy employees when discharging their obligations under the Controlled Substance Act in relation to opiates, Giant Eagle directed them to read the actual regulations for the Act itself?

A. That's not what I'm saying. What I'm saying is that a pharmacist's professional judgment and obligation is to abide by all laws and statutes, and certainly the Controlled Substance Act was one of those pieces that they followed.

Q. So you and I are on the same page when talking to this jury today that Giant Eagle did not have any internal written guidelines regarding pharmacy employees' Controlled Substance Act obligations

regarding opiates prior to 2013, correct?

MR. BARNES: Object to form.

A. I guess I'm confused with your question as far as the guidelines don't come from Giant Eagle. The guidelines come from the Controlled Substance Act, and our obligations of our pharmacists who are professionals who are licensed.

BY MR. MOUGEY:

Q. Mr. Tsipakis, Giant Eagle created guidelines in 2013, correct, sir?

A. The guidelines --

MR. BARNES: Object to form.

Misstates his testimony.

Go ahead.

A. The guidelines that you're referring to and the guidelines we published in 2013 are solely taken from the Controlled Substance Act. They're not our guidelines.

BY MR. MOUGEY:

Q. Sir, would you please pull out folder 28? We're going to mark this Exhibit 1.

///

(Whereupon, Tsipakis Exhibit Number 1 was marked for identification.)

TRIAL TECHNICIAN: Counsel, can I get the document number?

MR. MOUGEY: The Bates number, or the P-HBC-28 number?

TRIAL TECHNICIAN: The P-HBC number.

MR. BARNES: Can you help orient me as far as the numbers, because these folders are all --

A. What I'm looking for? It would says 28 on it? Or I have a lot of things that say P-HBC.

BY MR. MOUGEY:

Q. P-HBC-28. It's on the tab of the folder, since we're confused about the guidelines. It's up on the screen if you'd like to reference it.

A. I'll be happy to reference what's on the screen.

Q. That would be fantastic. Thank you, Mr. Tsipakis.

Do you see in front of you, sir, which we're going to mark as Exhibit 1, Giant Eagle's Controlled Substance Dispensing Guideline.

Do you see that, sir?

A. Yes.

Q. And the first paragraph under "Purpose" says, "To provide guidelines for the proper dispensing of controlled substances that support the 'corresponding responsibility' mandate placed upon pharmacists to exercise due diligence in their decision to fill or not to fill a controlled substance prescription." Correct, sir?

A. Correct.

Q. And as we -- if you would turn the page and go through the next page or two, sir, this document lists and identifies a number of red flags in relation to dispensing of controlled substances or opiates, correct, sir?

A. The document describes situations and things to look for, sure.

Yes.

Q. Right. And these are helpful for the Giant Eagle pharmacies when discharging -- pharmacists when discharging their responsibilities under the Controlled Substance Act, correct, sir?

A. They're not exclusive, but certainly things to look for, yes.

Q. I didn't ask if they were exclusive. Just hear me, Mr. Tsipakis, and the question I asked. I just asked you if they were helpful.

A. Helpful in relation to -- you're asking me to say if they're helpful for the pharmacist.

Q. Right.

A. These are things that they know and practice and do every day.

Q. That's right. So let's go back to Purpose again on the first page. So the guideline appears in the title, correct?

A. Yes.

Q. And underneath the Purpose, the word guideline is used again, "To provide

guidelines for the proper dispensing of controlled substances," correct?

A. Correct.

Q. Now, was there a document similar to this guideline that you could find after talking with -- interviewing four different individuals, reviewing e-mails, reviewing the firm intranet, coming up with a 200-plus document reliance list today, could you identify any guidelines similar to this that Giant Eagle created to help their pharmacy employees discharge their obligations under the Controlled Substance Act?

A. No.

Q. And that's because it didn't exist, correct, sir?

A. I can't tell you whether it did or didn't. I just didn't see it, or find it.

Q. Kind of like Bigfoot? I mean, do you believe that in all -- did you have anyone tell you that guidelines existed prior to 2013?

A. What I know is there was --

from what I saw and in talking to folks, certainly the pieces of these provisions were not only being followed, but certainly investigations, etcetera -- I know you don't like me to use etcetera. But there was investigations and e-mail traffic and conversations that had these materials being discussed.

Q. Yes, sir. But there was no formal guidelines similar to this written down in four pages to assist the pharmacy employees at Giant Eagle to discharge their obligations under the Controlled Substance Act prior to 2013, correct?

A. There was no document as what you're showing in front of me that I saw or found.

Q. Okay. Thank you, Mr. Tsipakis.

So we were going through the five different categories of controls for Giant Eagle employees to discharge their responsibilities under the Controlled Substance Act, and we covered 1, physical security, we covered 2, the pharmacist

controls that you listed as professional judgment, their training, assessment, screening.

Is there anything else under category 2 that you believe Giant Eagle pharmacists used to fulfill their obligations under the Controlled Substance Act?

A. Well, in addition, the pharmacist is the control, is that --

Q. Okay. The pharmacist is the last line of defense, so to speak, before the controlled substance or opiate is dispensed to that patient, correct?

MR. BARNES: Object to form.

A. I don't understand your question, "the last line of defense."

BY MR. MOUGEY:

Q. What does last line of defense mean to you, Mr. Tsipakis?

A. The pharmacist is the person that's dispensing the prescription. But the pharmacist assesses the prescription, screens the prescription, makes sure it's appropriate, and then dispenses the

prescription.

Q. Yes, sir. And that's the last gatekeeper, so to speak, before the opiate is dispensed to the patient and the patient leaves the store with a bottle or a sheet or a liquid of opiates, correct?

MR. BARNES: Object to form.

A. The pharmacist is the last person that the patient sees before they pick up a prescription. I guess I'm trying to understand your question.

The pharmacist gets a prescription, reviews that prescription, whatever diligence they need to do with that prescription, they counsel the patient, and then they give that prescription to the patient.

BY MR. MOUGEY:

Q. And that's the last professional, meaning the pharmacist, between the patient and receiving that prescription of opioids, correct?

A. I guess I'm still --

Q. It's the last healthcare

professional between the patient and the patient receiving the prescription of opiates or controlled substances, correct?

A. You're asking it's the last healthcare professional. Yes, that is correct.

Q. I'm going to come back to pharmacist control in a minute, unless you have anything else to add at this point, the tools available to a pharmacist other than intranet, the guidelines, continuing education, professional judgment. That's what I have listed. Did I get that right?

A. Yes.

Q. Okay. Audit control. Could you explain to the jury what you meant by audit controls as part of the total system?

A. Sure. Pharmacists have audit controls where they do regular counts of controlled substances, monthly, yearly. Certainly at any given time they can run any reports that they would like that would verify on hand counts, etcetera, also what orders are coming and what orders are leaving

and dispensing. So they have all that in front of them at their disposal.

Q. When you say reports regarding orders coming and going, what do you mean?

A. So orders, they know when -- they know what comes into the pharmacy, meaning from an order, regardless of where it came from, and certainly what they dispensed, what prescriptions they dispensed.

Q. When you say "an order," what do you mean?

A. A prescription. When I say order, I'm sorry, order -- an order for -- an order for any prescription drug, whether it's from the wholesaler, whether it's from our warehouse, they get their drug order, which is the ins, if you will, the prescriptions that come into the pharmacy, right, and then they know the prescriptions that leave the pharmacy, dispensed.

Q. Now I'm confused. Maybe Mr. Barnes will object to me, but I'm confused whether or not we're talking about orders or prescriptions at this point.

So when you just testified that a pharmacist has access to orders coming and going, are you talking about prescriptions, or orders through the distribution center?

A. You asked me about a control, an audit control. And what I'm testifying is that in order to do an audit of control you need to understand where your physical inventory started and where your physical inventory ended, so they have that information that they can use and they can audit and verify.

Q. Okay. So we're talking about an inventory control, meaning how many pills were total, and how many pills after they were filled -- prescriptions were filled, how many were left to ensure that the count is right. Am I saying that accurately?

A. It's an inventory control, but it's also an audit control, yes.

Q. To make sure that there's not thefts within the pharmacy might be one protection, correct?

A. Correct.

Q. Okay. But you're not suggesting to the jury that a pharmacist is watching orders, monitoring those orders for anything suspicious or red flags in relation to the distribution center, correct?

A. What I'm saying is pharmacists are filling legitimate prescriptions from legitimate prescribers, and then ordering from our warehouse, which is only our warehouse, or certainly from the wholesaler, so there shouldn't be any suspicious orders.

Q. Is there an assumption at Giant Eagle that all prescriptions coming from prescribers are legitimate?

A. There is no assumption. Each prescription is screened and verified by our pharmacist and filled, assuming that they're valid and legitimate, yes.

Q. All right. So we just hit the audit controls.

And we have reporting controls. What did you mean by reporting controls?

A. So there's reports that the pharmacist can run at store level, there's

reports that certainly we run regularly at corporate, and those are the different reporting controls.

Q. Why don't you explain to the jury what reports were available under the reporting controls at the store level.

A. So at the store level they run their regular narcotic audits as far as what their on-hand should be, their counting that they do, that they're required to do and document.

Q. Anything else?

A. So the main reports that they have is their on-hands and their counts that they do, and certainly the on-hands. So the on-hand reporting, and again, that all comes out of the computer system. And if they want to run ad hoc reports, they can do that as well.

Q. And what type of ad hoc reports are available?

A. At any given time they can run a usage report on a particular product, or what was dispensed and what should be left,

etcetera, which is the basis of our inventory narcotic audits.

Q. So the two reports that we just -- the narcotic audit and the ad hoc are both inventory control reports?

A. Yes.

Q. All right. Any other reports at the store level that are available for Giant Eagle employees to discharge their responsibilities under the Controlled Substance Act with regard to opiates?

A. Those are the main reports.

Q. All right. To me that kind of feels a little bit like etcetera, so I'm sorry, I'm just trying to get a complete list.

So when you say "main reports," are there any kind of subreports, you know, other than those two that you're identifying here?

A. Well, it's not so much subreports. Out of the computer system, there's a wealth of knowledge in the computer system, and they can pull reports for various

things.

Q. That's what I'm trying to get to. What are those various things, the etcetera? What's the various reports that can be pulled at the store level?

A. Oh, there's -- I mean, they can run reports on how many prescriptions they filled, they can run reports on -- so they can run inventory reports, they can run dispensing reports, they can run doctor reports, they can run a lot of different -- I mean, it's not an endless scenario, but they can certainly run reports based on the activities of the pharmacy.

Q. What's a doctor report?

A. They can run a report on prescriptions by a physician if they wanted to.

Q. Is that at the store level, or is that across all Giant Eagle?

A. It's an individualized report that they can run at the store level.

Q. So meaning no, they can't run it across all Giant Eagles?

A. At the store level, no.

Q. So that's -- there's more than 200 Giant Eagles during this entire time frame, or approximately 200, correct?

A. Correct.

Q. So when you said a doctor report, that's information just at that one Giant Eagle store that can be pulled out of the 200, correct?

A. For that store, correct.

Q. Yes, sir.

I think, I can't read my own handwriting, but after the doctor report I think I wrote dispensing reports. Did I get that right?

A. Correct.

Q. And what do you mean when you list dispensing reports at the store level for one of the reporting controls?

A. They can run what prescriptions were filled for a period of time, a day, a week, a month. It's basically activity for what was dispensed, control, noncontrol. They can run all of the dispensings for the

pharmacy.

Q. Is the control versus noncontrolled, is that always available at the store level?

A. For that store, yes.

Q. Is that a complete list of the reports that were available at the store level under reporting controls?

A. Those are the main controls. Certainly they can run a financial report on what the sales were for the pharmacy, what the margin was for the pharmacy, where they are according to budget.

So when I say there's a lot of reports, there's a lot of reports that the system can generate, and those are the different types of reports they can run.

Q. Any type of reports at the store level that can be run to access prescriber information across all of the Giant Eagle pharmacies?

A. At the store level, no.

Q. So if a pharmacist at any point in time at Giant Eagle wanted to analyze

pattern prescribing by a prescriber in relation to opiates, they couldn't be done at the store level, correct?

A. They would have information for their store.

Q. Across Giant Eagle, a pharmacist couldn't analyze pattern prescribing for a physician across all Giant Eagle stores, correct?

A. Correct. But there's multiple instances that I reviewed that pharmacists, if they had a question, they would bubble it up to corporate or to their district leader, and then the appropriate reports or investigation were done, numerous reports of that, what I saw.

Q. What I'm simply asking is if they wanted to run a report at the -- in the regular course at the store to analyze a pattern prescribing of a physician with regard to opiate, it couldn't be done, correct?

A. At the store level, no.

Q. A pharmacist could not analyze

the patterns of a prescriber in relation to opiate cocktails across all Giant Eagle stores, correct?

A. An individual store couldn't run a report like that. If they would have concerns, they would flag that to their supervisor, and then that would be appropriately -- so it was both sides. It's stores bringing concerns, and then certainly from our diligence corporately on concerns that we had as well.

Q. We're just talking right now about the pharmacists discharging their corresponding responsibility prior to fill. They could not review a prescriber's potential pattern of cocktails, correct?

A. The pharmacist would be using their professional judgment for each prescription, which is individualized for each individualized patient and each individualized circumstance. So they would be using --

Q. Go ahead, Mr. Tsipakis.

A. So they would be using that

information to discharge their duty on that prescription.

Q. Right. But there's blinders on for a pharmacist when trying to review a prescriber pattern or potential pattern of prescribing cocktails across all Giant Eagle stores at the store level, correct?

MR. BARNES: Object to the form of the question. Misstates his testimony.

A. That's why the pharmacists have access to the OARRS system and the prescription drug monitoring system, so they don't need to run a report, they have that tool that they can go in which will show all controlled substance prescribing across multiple states and multiple jurisdictions. So they have everything in front of them from that. They don't need to run other reports if that's what they're looking for.

Q. Let's address that next.

What I'm just asking you, sir, is a simple question. Can a pharmacist or any pharmacy employee at Giant Eagle run a

report at the store level to look at a prescriber's pattern of prescribing cocktails to patients across all Giant Eagle stores?

A. At the store level they cannot. And again, well, using the PDMP, the prescription drug monitoring program, is a better tool because then they could see across not only our stores, but all stores, all parts of the state, all parts of the region, etcetera. So it's a much more inclusive tool.

Q. Is it your testimony to this jury that a pharmacy employee at Giant Eagle can search OARRS and organize the data by prescriber to pick up patterns?

A. My testimony is that a pharmacist gets a prescription that's individualized per patient, and they use their professional judgment to fill that prescription, including using the OARRS program if they feel that it's necessary.

Q. That's not what I asked.

Can a pharmacist run a report on OARRS, sort it by prescriber so that

pharmacist can determine whether or not there's a pattern of a specific doctor prescribing cocktails?

A. I'm not familiar with how the OARRS reports are and how they can be sorted, so I cannot answer that.

Q. So when you're telling this jury that it can happen at the store level and you've pointed to OARRS, you have no independent knowledge whether or not OARRS can be sorted by prescriber, correct, sir?

A. I don't have any knowledge if it can be sorted by prescriber, but I do know that information on controlled substances prescribed by prescriber would be in OARRS.

Q. But you don't know if a prescriber can be searched to look at all of his or her prescriptions to determine if there's patterns with relation to cocktails, correct?

MR. BARNES: I'm going to interject an objection.

You've already taken the 30(b)(6) of Chris Miller who testified

extensively about Giant Eagle's data, data fields, documents, things of -- notes fields, things of that nature, so you keep pressing him on things that I think were already covered by the Miller deposition. So I'm going to object on those grounds.

BY MR. MOUGEY:

Q. One of the reports that you've identified to this jury that a pharmacist can access is OARRS in relation to its dispensing obligations under the Controlled Substance Act, correct?

A. Correct.

Q. And you have no understanding, sitting here today, of whether or not a pharmacist employee, pharmacy employee, can sort the data in OARRS by prescriber to pick up patterns, correct?

A. I do not know if they can -- how the information can or cannot be sorted, but I do know all the information that is needed and necessary is in OARRS.

Q. You agree that pattern

prescribing is a red flag, correct, sir?

A. I agree that pattern prescribing is something to look at, yes. It's not necessarily a red flag.

Q. Something to look at, that's a red flag, right, that requires a little bit more attention? Correct?

A. Yes.

Q. And you'd agree that pattern prescribing is a red flag, correct?

A. It's a screening piece of information you need to consider, yes.

Q. Screening piece of information to consider another question, correct?

A. Correct.

Q. Part of the due diligence process, correct?

A. That's correct.

Q. And can you explain to this jury any tools available to a pharmacist at the store level where a pharmacy -- Giant Eagle pharmacy employee can sort data by prescriber to pick up patterns?

A. As I've previously said, at the

store level they can't run a global report for multiple prescribers or multiple stores.

By logging into the OARRS system, they have all the information they need, not only including Giant Eagle, but any pharmacy on any opioid prescription that was prescribed by any -- dispensed or filled at any pharmacy.

Q. Explain to this jury, then, how a pharmacist or pharmacy employee at Giant Eagle can use OARRS to identify patterns from a specific prescriber.

A. So if I was a pharmacist and I was given a prescription, and I had some questions about that prescription, I could log into the OARRS system and see what controlled substances, all of them, any of them, that were prescribed for that patient.

Q. Sir, we're not talking about the patient. We're talking about sorting by prescriber.

Explain to the jury how a Giant Eagle pharmacy employee can access OARRS to analyze pattern prescribing for a specific

physician.

A. What I'm testifying is that there's no way at the store to create some sorted report as you mentioned. I'm telling you that they would go into OARRS to see what prescriptions were prescribed.

Again, I believe your question is how a pharmacist exercises their duty, and what I'm testifying is to tell you they get a prescription, they screen that prescription for all the things that they screen the prescription for. If there is a question that arises that they feel they need to look into using their professional judgment, they can log into the OARRS system and obtain information that they need to screen and process that prescription.

Q. That's a lot of words, Mr. Tsipakis.

What I want you to explain to this jury is how can a Giant Eagle pharmacy employee access OARRS to look at pattern prescribing by a specific physician?

MR. BARNES: I'm going to

object and move to strike the unnecessary characterization of his answer.

This is also getting repetitive, and also assumes that the pharmacist has any obligation to look for pattern prescribing under either Ohio law or federal law.

MR. MOUGEY: Thank you for that speaking objection, Mr. Barnes.

BY MR. MOUGEY:

Q. Now, Mr. Tsipakis, let's go back to the question at hand.

Explain to this jury how a Giant Eagle pharmacy employee can review OARRS for potential pattern prescribing by a specific physician.

MR. BARNES: Same objection.

A. I apologize, I must not be understanding your question. What I believe you're asking me is what tool does a pharmacist use to screen for a prescription, and I've said to you that they would use OARRS as a tool to do that.

BY MR. MOUGEY:

Q. That's not what I asked. You understand -- what's pattern prescribing mean to you, Mr. Tsipakis, in relation to opiates or controlled substances?

A. A particular medication regimen that's prescribed by a prescriber.

Q. So in relation to an opiate, would a pattern prescriber potentially write prescriptions for the same drug or drug strength over and over and over again regardless of diagnosis?

A. Is it possible? Yes, it's certainly possible.

Q. And how does a pharmacist or pharmacy employee at Giant Eagle review OARRS to review prescriber patterns for prescribing drugs repetitively, like OxyContin or hydrocodone?

MR. BARNES: Same objection as previously stated. I think we've gone over this three times, Peter.

But you can answer one more time, Jim.

A. So I'm trying to understand your question. But, for example, if it's a pain clinic doctor that sees pain patients, it's not unlikely that they would have similar drugs that they dispense to treat patients.

So what I'm testifying is a pharmacist would use individual factors for that prescription that is presented for that patient, and if there's any questions and diagnosis needed or things that they would need, they would contact the prescriber, they would use OARRS, they would find the information in front of them to be able to discharge their professional -- using their professional judgment to fill or not fill that prescription.

BY MR. MOUGEY:

Q. I'm not asking about the individual prescription. I'm not asking about the likelihood of a pain clinic doc.

I'm asking about, you've told this jury that one of the ways for a Giant Eagle pharmacist to review any concerns

regarding potential pattern prescribing history from a specific doctor was to go to OARRS. Could you please explain to the jury how a Giant Eagle pharmacist or one of its employees is supposed to use OARRS to look for pattern prescribing on behalf of a specific physician.

MR. BARNES: Same objection. Asked and answered four times now. It's getting pretty close to instructing him not to answer.

One more time, Jim.

BY MR. MOUGEY:

Q. How about just answer it this time, the exact question I asked.

A. What I don't understand is, you're asking me to say that a pharmacist would need to look under a certain -- again, it's a professional judgment that they need to fill that prescription.

So you're asking me on why a pharmacist would look for patterns or look at different things, and I'm telling you that they would look for that prescription that's

in front of them, and if they had questions they could talk to the physician's office, they could call corporate for something if they needed or if they had questions, in addition to looking at OARRS.

I apologize if I'm not understanding your question, but --

Q. I think you understand it. What I'm asking is you keep pointing to OARRS, and I'm asking -- I'm not asking you why they would look to OARRS.

You understand what pattern prescribing is, correct?

A. Yes.

Q. And how does a pharmacist use OARRS to answer any questions about pattern prescribing?

A. What I'm confused about your question is pattern prescribing may or may not matter to that particular prescription. So like I said, I tried to give an example, if a patient comes from a pain clinic, and that pain clinic sees pain patients, you would see very similar prescriptions,

different doses, different quantities. So I guess, I apologize, I don't understand your question.

Q. How is OARRS used to identify or provide an answer to a Giant Eagle pharmacist regarding pattern prescribing? I'm not asking about why. How? How is OARRS used?

A. OARRS would be used to get information on what controlled substances, if any, were filled by another pharmacy for that patient. So that pharmacist can use that information to discharge their professional judgment to fill or not fill a prescription.

Q. The simple answer is OARRS can't be sorted by prescriber to look at patterns, correct, Mr. Tsipakis?

A. Again, not having used OARRS, I can't tell you how it's sorted or not sorted.

Q. All right. So we're on the reporting controls, and we've gone through the store level reports.

What reports are available at Giant Eagle to ensure that its pharmacies are

discharging their obligations under the Controlled Substance Act in relation to opiates?

A. Sure. So in preparing for this testimony I saw numerous examples of a corporate team member running reports globally to look for any patterns or any types of prescriptions that they had question on, and then they would follow up with the appropriate district leader, team leader. So numerous examples of inquiries, e-mails back and forth, calls back and forth between our analytics team, compliance team, operations team, to look for different drugs or different patterns or different physicians.

Q. What type of systematic reports are being run at Giant Eagle to monitor dispensing of controlled substances, but more specifically opiates?

A. Reports are run on the analysts -- again, from what I saw from the information I saw, analysts are running different reports and using the modules that we have to look for potential areas of

concern.

Q. And what are those reports that are being -- you're testifying to this jury that those are being run systematically, meaning on a regular basis?

A. There is reports that run regularly, yes.

Q. Okay. And what are those regular reports?

A. So again, of the ones that I saw, it was reports run on quantities, certain drugs, certain -- you know, which stores these drugs are being filled at, etcetera. And where there's questions that come up, those are being discussed with the folks that need to be involved in those discussions.

Q. When you say quantities of certain drugs, what do you mean, Mr. Tsipakis?

A. So what I saw as part of my research, there was a question where I saw a few e-mail traffic where one of the analysts saw a number of pills at a particular store

on a certain controlled substance that was dispensed, and there was definitive discussion between corporate, the store leader, and a district manager on what are these prescriptions, who is prescribing them, etcetera. In other words, a utilization report, I guess maybe is a good way to characterize it.

Q. And your testimony to this jury is that those reports were being run on a regular basis with Giant Eagle discharging its responsibilities under the Controlled Substance Act?

A. So what I'm telling you is that I saw numerous reports and inquiries run across all the --

Q. Go ahead.

You saw examples in e-mail traffic, correct, sir?

A. Correct.

Q. What I'm asking you to explain to this jury is what reports were run on a regular basis to identify potential red flags in relation to dispensing of opiates. Just

name one, let's start there. On a regular basis.

MR. BARNES: Object to form.

A. The reports -- so the reports are generated based on if there's a threshold or something that triggers that basically brings up a flag or brings up a question, to your earlier point, a question that comes up, and then there's followup to that question, or that -- something that flags, if you will.

BY MR. MOUGEY:

Q. All right. So we've identified one report. That's a threshold.

Explain to the jury what a threshold report is.

A. So a threshold report is where you would have -- and again, it's generalized across the chain, so if there's a certain threshold of a particular controlled substance that's dispensed, it will flag that there was a utilization over that threshold, and then it would kick off an investigation or a conversation.

Q. Any other regular reports that

were being run other than threshold reports?

A. I saw ad hoc reports in response to questions from the field or questions around from, for example, from our loss prevention department. If they had some information about a particular doctor or a particular patient, you know, those reports would be run to substantiate whatever information they were looking for.

Q. So the question I asked was any other regular reports that were being run other than threshold, and your answer was I saw ad hocs. Let's go back to my question.

Regular reports, other than the threshold, and part of your investigation for today covering a period of 15, 20 years, have you been able to find any other regular reports run at the corporate level evidencing Giant Eagle's discharging its responsibilities under the Controlled Substance Act?

MR. BARNES: Object to form of question. He's already testified to two different reports, Peter.

A. Actually more.

MR. MOUGEY: Any more of these kind of speaking objections and your insertion of his testimony, I'm going to have you sworn in next and I'm going to put you on the stand, okay, Bob? Why don't we just get Mr. Tsipakis' testimony rather than yours.

BY MR. MOUGEY:

Q. Any other reports that you've identified already regularly run, Mr. Tsipakis?

A. As I mentioned, it's the threshold reports that I mentioned.

Q. Yes.

A. And those -- to your point and my point, as far as regular reports, if there's an ad hoc report that turns into a regular report, could be a month, could be a week, could be -- those are all different reports that are run.

So the main reports -- so going back to your question, the main report that's

run regularly is that, the threshold reports on dispensing, on what is dispensed.

Q. So just make sure you and I are saying the same thing. What's ad hoc mean to you?

A. It's reports that are either from our analyst side, either from an LP. So basically there is some piece of information that triggers a request for a report, so it could be -- so that's why I call it ad hoc.

So it could be at the direction of our loss prevention department, it could be at the loss prevention, it could be to follow up on an internal investigation, it could be a followup on a particular thing we want to look at, so there's various reports.

Q. So ad hoc, I just looked it up to make sure you and I are doing the same thing. "Ad hoc. For a particular purpose, as necessary," meaning it's kind of a one-off report, correct?

MR. BARNES: Object to form.

A. It could be a particular purpose, but then that purpose, it can

continue, so...

BY MR. MOUGEY:

Q. Right.

You can't identify any other regular report run during this 15 or 20 years other than the threshold reports, correct?

A. That's the report that runs regularly, yes.

Q. Yes, sir. That's the only one you can identify, correct?

MR. BARNES: Objection.

Misstates his prior testimony.

You can answer.

A. That is the main report, as I mentioned. But then there's reports we run, as we said, for the audits that we run, and there's lots of reports that run.

The threshold report runs, or the reviewing of those threshold reports run regularly and consistently.

BY MR. MOUGEY:

Q. Now, explain to this jury on the threshold reports what year those started.

A. The exact year, I don't remember. It was for sure covered during my first deposition at length on when those reports started and didn't start.

Q. I think I know. How about you tell me if I'm right. 2013 is when the threshold report started.

MR. BARNES: How about we not duplicate his prior deposition? You've gone pretty far into it, Peter, and I think it's unfair. And the witness is not being produced today to regurgitate his first deposition, and the Court has ordered that it not be regurgitated, so...

MR. MOUGEY: We're just talking about dispensing, and Mr. Tsipakis has identified the threshold reports as a report regularly run for Giant Eagle to discharge its obligations on the pharmacist's side, so I'm simply asking Mr. Tsipakis when did that report begin to be run.

///

BY MR. MOUGEY:

Q. Does 2013 sound about right?

A. I don't believe that's correct. I believe it definitely was done before 2013. The exact, I couldn't tell you, I don't remember. But it was definitely covered in my deposition.

Q. Is it your testimony today that the -- to this jury that threshold reports were not used by Giant Eagle to discharge its obligations under the Controlled Substance Act as a dispenser?

A. What I'm saying is the Giant Eagle pharmacists have their -- so the Giant Eagle pharmacists have a responsibility to fill their prescriptions, to check their prescriptions, to use the tools they have available to them.

Our obligation is to make sure that our pharmacists have the tools that they need to be able to do their job.

Q. Yes, sir. And that's what we're talking about right now, we're talking about the reporting controls which is one of

the five tools available to Giant Eagle employees at the pharmacy level to discharge its obligation.

What I'm asking you, sir, is, did Giant Eagle pharmacies use the threshold report to discharge its obligations as a dispenser?

A. What I'm saying is there was no requirement for us to have any such report or to document such report.

What I am testifying is that we had that screening and that tool as an additional screening tool for us as a corporation, in addition to what the stores and the pharmacists are looking at and doing as well.

Q. And is it your testimony to this jury that the threshold reports were used as a screening tool by Giant Eagle as a dispenser?

MR. BARNES: Object to form. I think it's covered in his prior deposition.

I think, Peter, you've gone to

little bit -- way beyond, so I'm going to instruct the witness not to answer.

MR. MOUGEY: We're going to take --

MR. BARNES: Pardon me?

BY MR. MOUGEY:

Q. Was Giant Eagle using the threshold report as a dispenser, as its dispensing obligations?

MR. BARNES: Same objection.

Jim, is it is it your recollection this was covered in your prior deposition?

THE WITNESS: Yes.

MR. BARNES: All right. So no need to answer.

MR. MOUGEY: Let's go ahead and go off the record. I'm going to contact Special Master Cohen. I think I'm entitled to ask that question. I'm specifically asking about dispensing.

I'd like to go off the record, and we'll contact Special Master Cohen

and try to get an answer to that question.

THE VIDEOGRAPHER: 2:30. We are off the video record.

(Whereupon, a recess was taken.)

THE VIDEOGRAPHER: 3:03, we are on the video record.

BY MR. MOUGEY:

Q. Mr. Tsipakis, did Giant Eagle use the threshold report to discharge its obligations under the Controlled Substance Act as a dispenser?

A. The obligations as a dispenser fall on our professional responsibility of our pharmacists. We use the reports as another tool and another aspect of that. But the pharmacists at the store with their judgment on whether to fill a prescription or not fill a prescription.

Q. Right. But what I asked you was, did Giant Eagle use the threshold report to discharge its obligations as a dispenser under the Controlled Substance Act?

A. The dispenser -- the pharmacist is the one that's dispensing the prescriptions.

Q. So in no shape, form, or fashion did Giant Eagle use the threshold report to discharge its obligations, even in part, under the Controlled Substance Act as a dispenser?

A. That's not what I'm saying. What I'm saying is that we used the threshold reports in addition to the information that the stores had to work as that system that we talked about earlier to make sure we're filling prescriptions appropriately and accurately.

Q. So is the answer to my question yes, that Giant Eagle at least in part used the threshold report to discharge its obligations as a dispenser?

A. We used those reports as part of our system, yes.

Q. As part of the system -- part of the dispensing system is what I'm asking.

A. The dispenser is the store, so

yes, the store.

Q. Okay. Now, let me just see if I can tie that all back together.

So the threshold reports were used at least in part by Giant Eagle at the store level regarding dispensing to fulfill its obligations under the Controlled Substance Act?

A. The reports were run and used corporately to help support and, I guess -- so from a perspective on the responsibility on whether to fill a prescription or not fill a prescription, that's the professional judgment of the pharmacy. And we were using those reports to identify areas that either we would like to look at or have concerns about or have flags about. So they all worked together.

Q. On the dispensing side is what I'm asking.

A. On the dispensing side, yes.

Q. How often were the threshold reports run and used on the dispensing side at Giant Eagle?

A. Daily.

Q. And which department was in charge of running the threshold reports for review on the dispensing side?

A. So the IT side supported setting up those reports and maintaining the systems that generated those reports, but then those reports were used by various groups, but primarily the compliance department, pharmacy compliance department. And then based on those reports, if they needed to bring another group in, they certainly could do that.

Q. So were the reports run -- were they automated, that they just ran daily?

A. Yes.

Q. And then were they disseminated to individuals that were responsible for reviewing those reports with regard to dispensing?

A. Those reports would auto-generate, and anything that showed up on those reports would go to the appropriate department, for example the compliance

department, the folks in the compliance department.

Q. I just want to make sure that we're saying the same thing.

The threshold reports that we're discussing, those are one in the same with the threshold reports that were used on the suspicious order side as a distributor, correct?

A. Correct.

Q. Which department made the determination whether there needed to be followup on the dispensing side from the threshold reports?

A. The pharmacy compliance department.

Q. Do you have a specific name of who that individual was or is within the pharmacy compliance department that was responsible for reviewing the threshold reports for dispensing?

A. It varied over time, but George Chunderlik was one of the folks that reviewed those reports. Joe Millward was another

person that would look at those reports. For example, two individuals that got those reports and reviewed those reports.

Q. Was there a trigger, so to speak, with a threshold report that would generate an investigation or a followup on the dispensing side?

MR. BARNES: Objection. Duplicative of track 1 testimony.

I don't think that -- Peter, I'm recalling now that you didn't do that track 1 deposition.

MR. MOUGEY: I read it, though.

MR. BARNES: Okay. This is clearly stuff that was covered in track 1, so I'm going to object to continued questioning.

I'm going to let you keep asking them, but I'm noting for the record that this is duplicative and repetitive as prohibited by the Case Management Order 3329 and 3595.

MR. MOUGEY: Thank you.

///

BY MR. MOUGEY:

Q. So, Mr. Tsipakis, what I asked was, is there a trigger on the dispensing side of when there needed to be followup to look at individual prescriptions?

A. So the threshold reports basically show movement of product, and then if there was a certain threshold that was met, those would show up on a report, and then that report, depending on the information and the stores involved, etcetera, there would be followup.

So it wouldn't be unlikely for the operations folks, loss prevention folks, analytics folks to be together to figure out the next course.

Q. There wasn't any specific triggers or flags on the dispensing side that were different than the distribution side?

A. It's one in the same.

Q. We started down this line an hour, hour and a half ago talking about the total system or the multiple layers, and we've identified the physical security, the

pharmacist controls, audit controls, reporting controls, which is where I think we are now. And we've talked about the store level reports and we've talked about the corporate level reports.

And I believe that the corporate level reports, yeah, the corporate level reports included the threshold reports.

Have I captured that accurately?

A. Correct.

Q. You also identified some ad hoc reports, correct?

A. Yes.

Q. Anything under the reporting controls that we haven't identified yet?

A. No.

Q. Now, do you believe that the threshold report -- I'll tell you what. Give me a second.

Mr. Tsipakis, would reviewing your prior testimony from 2018 help you with refreshing your recollection as to when the threshold program began?

A. Sure.

Q. I'm going to put up -- it's page 117 of your transcript. Let me see if this refreshes your recollection from your -- Mr. Gaddy asked, "When did HBC first start utilizing a threshold program?"

And I believe you responded, "A threshold program with some IT enhancements were put into place roughly in 2013."

Mr. Gaddy asked, "Do you know what month in 2013 or season?"

And you just said you don't recall exactly.

Does that refresh your memory, sir, that the threshold report began in -- sometime in 2013?

A. Yes.

Q. And that's the same threshold report we're talking about now in regard to dispensing, right?

A. For that one, yes.

Q. Yes, sir.

Okay. So under the reporting controls component that we've been walking

through for the last half an hour or so, do you recall, outside of the threshold report, any other regular reporting being used for Giant Eagle -- by Giant Eagle to discharge its obligations as a dispenser?

MR. BARNES: Objection to form. Vague definition.

A. Certainly prior to 2013, to your point about reports, we had systems like the SupplyLogic system and other systems that folks regularly ran reports or looked through those systems for things to look for, or patterns that they needed to look at, etcetera.

So the threshold report, as you mentioned, they're from 2013, but reporting didn't start just in 2013, there was other tools as well before that.

BY MR. MOUGEY:

Q. Explain to the jury what those SupplyLogic system is.

A. SupplyLogics is a tool that basically looks at the utilization of prescriptions, for example number of tablets

or dosage units entering the pharmacy, how many are being dispensed, and it would flag any type of discrepancy, or a flag of overutilization, for example.

It also would -- if you wanted to look at a certain class of drugs or stores, etcetera, I mean, it allows you to look at all that.

Q. Would you consider SupplyLogic to be an inventory control or inventory management system?

A. It's an inventory control, but certainly we also use that as -- to understand where prescriptions, what prescriptions, and in what frequency, and in what quantities were being dispensed.

Q. Can you point this jury to any regular reports being run at either store or corporate level using SupplyLogics?

A. I know folks used it daily, weekly, monthly as part of their duties.

Q. But there's 200 -- approximately 200 pharmacies at Giant Eagle, correct?

A. Correct.

Q. Some of the stores receive as many as 6,000 prescriptions a week, correct?

A. Correct.

Q. I think I saw a figure there's over 30,000 employees, correct?

A. Total employees, not pharmacy employees, but yes.

Q. You can't point this jury, however, to any specific reports that were automated like the threshold report prior to 2013?

A. What can I point the jury to is that there was the compliance department, and within the compliance department they had duties that they ran, again monthly, weekly, that they discharged their duties, and as part of those duties they ran reports and they looked at trends, and they looked at areas, if there was any areas of concern.

Q. And what were the reports that compliance ran regularly?

A. The specific names I don't recall, but I definitely saw, through the

things that I saw, information where something flagged. So it was both ways.

So it could be that a store requested more information, or if something from a local level bubbled up that they ran reports, and then they continued to run those reports, etcetera.

Q. Would you refer to those as ad hoc reports?

A. Well, ad hoc from the perspective of the same individuals ran those reports all the time, so in my mind those are regular reports, not ad hoc reports.

Q. I'm a little confused, so why don't you help me out here.

You're referencing regular reports, but you can't describe with any specificity what those are, correct?

MR. BARNES: Object to form.

A. What I know is the systems auto-generated reports, and there was auto-queries that ran within that, and those folks within the compliance group regularly reviewed those reports, and then regular

actions came out of those reports.
BY MR. MOUGEY:
Q. Okay. So auto-generated reports, what auto-generated reports from SupplyLogic?
A. So we have the threshold reports, and then prior to -- again, it's the nomenclature, but basically there were reports that ran and could be run and queries that could be run for any criteria that the compliance team set, for example.
Q. Right. I'm asking you what specifically types of reports were run on a regular basis?
A. So utilization of -- it could be everything from particular prescribers, so, for example, if loss prevention got information on a particular physician, they could run a report and a regular report on activity of that prescriber.
If there was a -- for example, I saw a lot of reports run on Suboxone or buprenorphine, those kind of things, on what was being prescribed, where, and those type

of things.

So they ran all these reports within the tools that they had, SupplyLogic being one of those tools that they had.

Q. We're talking about regular reports, and you used the word "could be" in your answer.

I'm asking, can you identify for this jury any reports that were run on a regular basis out of SupplyLogic?

A. The reports all basically are a threshold type report where there is something that triggers, and then that follows up with an action.

Q. So what was the something that triggered in the SupplyLogic?

A. Overutilization. Overutilization.

Q. Explain what overutilization is.

A. So based on -- again, these all are based on thresholds and figures to see is there an area or a store or a particular prescription that -- a particular class of

prescriptions, for example, that are being dispensed, and then our team would investigate that and ask questions about it.

Q. So was the SupplyLogic just a different name for the threshold report?

A. It's a tool. I mean, it's a tool.

Q. So what was the threshold that triggered the report?

A. I couldn't tell you the exact number of the threshold, but I know they were looking -- the tool helps us identify patterns or things to look at, things of concern. It's not indicative of an issue, it's things to look at or to check.

Q. I need you to help me be more specific. You're using a lot of words like that reports are being run, the specific examples, our team would investigate and ask questions, or you just testified that they're tools to help us identify patterns.

So I need you to get a little bit more specific and explain to the jury, outside of that threshold report, what types

of information were being run on a regular basis at Giant Eagle to discharge its obligations under the Controlled Substance Act as a dispenser?

MR. BARNES: Asked and answered a couple times already.

But go ahead.

A. Reports, for examples of the reports there was certain drugs that they could run and they would run. Method of payment that was run. The prescribers, which prescribers were prescribing in a certain area or geography or stores. So all those things were things that they regularly looked at. And when there was something that flagged, they would investigate and get the appropriate folks involved.

Or if they got information from the field or from LP or someone else, they would add that to their -- the things that they ran. I mean, these were folks in the compliance department that did regular activities week to week, day to day.

Q. Certain drugs, what specific

reports at Giant Eagle were run analyzing what you described as certain drugs?

A. So there was reports run on hydrocodone usage. There was drugs, Suboxone as I just mentioned. Cash prescriptions for some of those drugs.

Q. What about them? You'd just run the number of pills, you'd run the number of prescriptions, you'd run the number of transactions? What were the reports?

A. As I mentioned, you'd run those reports to look for patterns of overutilization.

Q. What kind of patterns?

A. As I just mentioned, overutilization, meaning this store is different than this store, this prescriber is different than this prescriber. So utilization is usage, usage.

Q. And where are examples of all of these reports being run through SupplyLogic?

A. So the examples are they use those tools.

I think we're getting -- we might be getting confused from a reporting perspective. They ran -- they use different tools, Supply Logics being one of them, to run reports, regular reports in areas that they wanted to look at, with threshold being the main one of a threshold.

They all basically tie back to a threshold. There's a certain number that triggers a number, that triggers a pattern that our folks would investigate as a tool.

Q. When you say a threshold or a pattern, that there would be a number of pills for a specific NDC code, and when they've exceeded that NDC code there would be a trigger?

A. Difference than the average, or difference than the chain or something, correct.

Q. So it was aggregate volume for a specific NDC code?

A. By store, by area, yes.

Q. On the prescriber side, what regular reports were run by Giant Eagle?

A. On the prescriber side, there was physicians that, for whatever information we had that, either from the store level, from LP, they would run reports on activity from those prescribers. And a lot of those reports would generate from, again, from the prescription side.

So if there was utilization on the prescription side, they would tie it back to a particular prescriber, and then you run those prescribers, and then you would see they're part of what practice or what area, etcetera.

Q. Let me see if I get this right.

The higher than in the average would trigger a report on certain drugs. Did I get that right?

A. The compliance folks would run those reports, and when there was a pattern, the tool identified a pattern for them to look into, they would look into that, and then the appropriate investigation would happen.

Q. Let's just focus on just what I

asked. We're going to do this in steps.

A. Okay.

Q. So the certain drug report was a report that was based on a threshold, and when exceeded it would cause a flag, is that fair?

A. Yes.

Q. Okay. Once that flag was raised, then Giant Eagle had the ability to run a report and drill down to see what caused that flag, is that fair?

A. Yes.

Q. And sometimes that flag would necessitate looking at specific prescribers, is that fair?

A. Yes.

Q. And those prescriber reports may shed light on pattern prescribing activity, correct?

A. Sure. Yes.

Q. Now, outside -- but that was all caused by the trigger from the threshold report, correct?

A. Threshold report, or again,

there's some piece of information that caused us to run those, or regularly run those. But yes, the threshold.

Q. Now, if I use the word coding or software code, are you familiar with that?

A. Yes.

Q. Was there any software code at Giant Eagle that would analyze prescribing habits of physicians to spot red flags with patterns outside of that threshold report you just identified?

A. We would use the third-party tools like SupplyLogics to do that, and those systems have coding or algorithms built in to do the analysis.

Q. But that's triggered by the threshold report or some other information, correct?

A. For example, the SupplyLogics module, the tool, has its own algorithms and has its own triggers and has its own monitoring pieces to it, and raises things to look at.

Q. Is it your testimony today that

SupplyLogic was -- had code that was analyzing physician prescriptions looking for pattern prescribing activity?

A. What I'm testifying is that SupplyLogics was a tool, one of the tools that we had that was able to look at trends to then give our folks things to -- clues of things that they should look at, or would like to look at, or need to look at.

Q. I want to get our lingo down so we're saying same thing.

When you say "trends," you're talking about thresholds, correct?

A. Well, for example, in the SupplyLogics system it will show you one store versus another, or a trend, right, so you could see one store, for example, that sells more of one drug than another.

Q. That's aggregate volume, correct?

A. It's per the store. I mean, it's aggregate, but also you could look at store level, too.

Q. Right. That's aggregate volume

per store, correct?

A. And also versus the chain, correct.

Q. Sure.

A. Yeah.

Q. But we're talking about prescribers, and what I'm asking, is there any systematic coding at Giant Eagle that was analyzing physician prescription writing looking for patterns?

A. So as we just discussed, the system that we're talking about, when it's aggregating the prescription volume, it would then hone into store, and then when you hone into the store you could see what prescribers are generating those prescriptions.

Q. You're talking about the trigger being the threshold which would then cause further investigation, correct?

A. Yes.

Q. That's not what I'm discussing. That's not what I'm asking.

What I'm asking you is, independent of those thresholds, is there any

coding or any computer algorithm at Giant Eagle that would analyze physician prescriptions looking for patterns?

A. Specific to the prescribers, no.

Q. Same question on method of payment. Any systematic algorithm or software coding that was analyzing method of payment under system logic?

A. We would regularly run reports, and I've seen examples of reports where we ran method of a payment, for example, across, for example, hydrocodone product, so you would see method of payment, cash, insurance, and you could see that and analyze that.

Q. So in preparation for today, you've reviewed materials that date back 10 to 15 years, is that fair?

A. Since 2006 or so, yeah.

Q. So your counsel has identified about 200, 200 or so documents that you relied on for today.

Does that sound about right?

A. Yes.

Q. Out of those 200 or so documents, is it fair to say that there's about 10 to 15 e-mails with reports as attachments evidencing these types of ad hoc reports that you are referencing?

A. There's -- the answer is, well, yes, but there's the investigations that follow with it. There's e-mail strings, there's the cause and effect, and there's all the, again, the snippets of those pieces. But it shows the pattern of some things flagging, communication from corporate to store and vice-versa with LP, all together working towards identifying and researching and clearing.

Q. And I'm just simply asking you, based on the actual evidence, the e-mails, Giant Eagle has been able to identify 10 to 15 examples of ad hoc reports being run that you just mentioned, correct?

MR. BARNES: Object to the form of the question. Assumes facts not in evidence. Well, I'll leave it at that.

A. What I reviewed was examples of what was an ongoing process. I saw 10 or 15 examples of that, but that is not -- it was not only 10 or 15 times these things were happening, they were happening regularly and being executed regularly and daily, weekly, monthly. I just saw examples of those showing the breadth of those controls and the inquiries and the investigations and the followup and the documentation.

Q. And all of those examples, the followup, the documentation, for purposes of today you've been able to identify 10 to 15 examples, correct?

A. Of what I saw. But then in talking with folks that were here during those times, they -- again, corroborates those examples that they had those controls in place, and the constant communication between corporate and stores, and then working together as a team on if there was concerns or questions or things they wanted more information, that they would work together to get that information, to provide

that information, to follow up on that information. There was examples that law enforcement used that information from us, vice-versa.

Q. I appreciate all that extraneous information, and I'm confident when Mr. Barnes asked you questions you can have the ability to explain all of that just like you did right there. But what I'd like an answer to is my specific question.

And my specific question is, in preparation for today you were able to identify, you meaning Giant Eagle, 10 to 15 examples in e-mails of all of these reports, correct?

A. Of what I saw, correct.

Q. Yes, sir.

Now, was SupplyLogic available at the store level?

A. I'm not sure of the exact pieces that they used or didn't use. I know it was -- there was pieces of SupplyLogics that helped them with their order points and creating orders, and then there was the

functions that the corporate team used as well.

Q. These examples you just gave of certain drugs and prescriber searches and methods of payment searches for SupplyLogic, were those available as tools to the pharmacy employees at Giant Eagle?

A. Certainly if they had a concern, they would -- I saw examples if there was a concern, they would raise a concern, and then the appropriate reports or information was researched and followed up on.

Q. At the time of fill, if the pharmacist wanted to run some of the queries you just identified prior to filling the prescription, that couldn't be done, correct?

A. At the time of fill the pharmacist would use the tools available for them, whether it's utilizing OARRS, whether it's utilizing another pharmacy looking at the profile, looking at a profile from another store, talking to the physician themselves or the prescriber.

Q. Right. We're going to get to all that, but that's not what I asked you. What I asked you was specifically about system logic.

At the time of fill, could the pharmacist run the queries you just identified prior to the prescription and the patient walking out the door?

A. Those global reports, no.

Q. I'd like to go back to the only document we marked, Exhibit 1, Mr. Tsipakis. Controlled Substance Dispensing Guideline.

MR. BARNES: Is it a folder marked HBC-00028?

MR. MOUGEY: Yes.

MR. BARNES: Are you calling it Exhibit 28, or Exhibit 1?

MR. MOUGEY: Exhibit 1.

Mr. Barnes, are you there?

MR. BARNES: I'm still here.

MR. MOUGEY: I mean, have you got the doc? Okay.

BY MR. MOUGEY:

Q. So, Mr. Tsipakis, let's start

with, would you explain to the jury what, your understanding as a Giant Eagle representative, corresponding responsibility means?

A. The responsibility of our pharmacist to ensure that the prescriptions are valid and issued pursuant to a proper medical purpose, and all of the rest of the things that go with the proper prescription, proper dosing, proper therapeutic, and the analysis that goes through that.

But in particular for the controlled substances, to make sure that those prescriptions are valid, and valid being that they're being issued as a proper medical purpose, and appropriate dosing, etcetera.

Q. When we say -- when the term -- when Giant Eagle in this document, Exhibit 1, uses the word "corresponding," corresponding to who?

A. Corresponding to the pharmacist.

Q. And who is the pharmacist's

responsibility corresponding with? Who is on the other side?

A. The prescriber.

Q. So would you think it's fair to say that the pharmacist's responsibility goes hand-in-hand with the physician to ensure that a prescription is valid and issued for legitimate medical purposes, especially in the context of opiates?

MR. BARNES: Objection to form of the question.

A. I would say that there is responsibility on both sides. The physician is responsible making sure that the prescription they issue is for a bona fide patient/prescriber relationship, it is appropriate therapy for that patient, and all of the diagnostic pieces that they're trained to do in issuing a proper prescription.

On our side we have the corresponding responsibility to ensure all of the things the pharmacists look for, therapeutic duplication, utilization, drug interactions, OTC, Rx, and including if the

prescription is valid, and it's got all of the information that we need to it, need to have on it, but also issued with a legitimate medical purpose.

Q. Can you turn to Bates number 93, which is the next page, page 2 of this document, under the section titled "Appropriateness of Controlled Substance Prescriptions," and it has in quotes "Red Flags."

Do you see that?

A. Yes, sir.

Q. Would you explain to the jury what Giant Eagle means when it uses the term red flags internally?

A. So this document is dispensing guidelines, that's basically a formal summary of information that's already available.

So, for example, these red flags are practices or screenings that were common, but also used by the DEA as examples.

And what we have listed here is the same information, just neatly organized for the pharmacist to -- they know this, but

certainly to have this in front of them as well.

Q. It's nice to have it all neat and organized right in front of the pharmacist, right?

A. It is. But again, this is things they already know, and this is part of what's in the pharmacist manual, the DEA pharmacist manual. Also there's state law that covers some of these things on top of what the DEA regulations are. But these are just things to keep in mind when filling a prescription, and things to look for or, again, using your pharmacist professional judgment, and also these other things here to look for as well as you're doing your diligence.

Q. All right. I'd like to stay on page 2, but, Mr. Tsipakis, if you'd look on the paper version, that there are ten red flags on page 2 and page 3, correct?

A. Correct.

Q. And it's your testimony to this jury on behalf of Giant Eagle that these red

flags are not new to Giant Eagle as of 2013, correct?

A. Correct, nor are they exclusive.

Q. Yes, sir. These aren't necessarily an exhaustive list, is that what you mean?

A. Correct.

And also, these flags may or may not be the same red flags depending on the patient and the prescription.

Q. These are examples, correct?

A. Things to look for, yes.

Q. Yes, sir. You talked -- you testified earlier about the fifth kind of external control, you mentioned the DEA as one of those external controls, correct?

A. Yes.

Q. And you're aware that the DEA has a website specifically devoted to diversion of controlled substances, correct?

A. Yes. With information on it, yes.

Q. Yes, sir.

And Giant Eagle would agree that that website was a good source of information about red flags, correct?

A. It's a source, yes.

Q. Yes, sir.

And it's one of the five controls you mentioned earlier, the external, the DEA's information, correct?

A. Of course, yes.

Q. And if we look through these ten, let's start off with number 1.

Now, you and I talked a little bit about a cocktail earlier. Why don't you explain to the jury what a cocktail is.

A. Well, a cocktail in -- what it's being listed here is a particular series of drugs put together, in this case being an opiate, benzodiazapine, and a muscle relaxant, so the cocktail being those three drugs, those three classes of drugs being prescribed together.

Q. Now, you would agree that Giant Eagle believes that those three drugs used in combination are a red flag?

A. They're something to look at. It doesn't necessarily mean there's something wrong with the prescription or the patient. It's just something to look at.

Q. Sure. That's what a red flag means, right, that you've just got to follow up, correct?

A. Correct.

Q. Now, explain to the jury why these three drugs, this cocktail, why are those a red flag when used together?

A. Are you asking for the clinical reason they're used together, or from a pattern why they're used together?

Q. What is -- why are they -- why is that a red flag when these three are used together? That's the potential -- what's the potential issue or problem?

A. There's a potential that these drugs used in this combination are for patients that may not be using these for a legitimate purpose or for the appropriate therapy.

Q. And why is that?

A. It's a characterization, but there is prescriptions that -- a lot of the abuse that's made on these particular prescriptions, they include these three components together.

Q. So is another way of saying that it's indicia or indicative of pill-seeking behavior from a patient?

A. It's potential, but then there is absolute legitimate reasons to use these together as well.

Q. What is the risk, the health risk of taking these three drugs together, if any?

MR. BARNES: Objection to form. He's not a doctor.

A. I could tell you what these three drugs do as far as clinically what they do and what they have. Is that your question?

BY MR. MOUGEY:

Q. Yes, sir. Please explain.

A. Okay. So the oxycodone is the opiate for pain; the benzodiazapine is for

anxiety, or basically a tranquilizer; and then the muscle relaxant is a potentiator as listed here.

Q. And those drugs used in combination, what impact, if any, does that have on the probability of respiratory failure of a patient?

MR. BARNES: Object. Asking for a medical judgment.

A. Again, it depends on the patient and the conditions certainly, but they could cause respiratory issues.

But as far as --

BY MR. MOUGEY:

Q. How would you define "respiratory issues"?

A. Well, certainly it could -- so this combination could cause someone to be unconscious or have trouble breathing, or potentially --

Q. Die?

A. -- die, yeah.

Q. So that's kind of the reason why it's a red flag in combination, correct?

A. Well, a lot has to do with dosing and frequency, and so it's not an absolute. But certainly these three things together would be something to look for, yes.

Q. Does Giant Eagle have an understanding of whether the DEA believes that those drugs prescribed to the same patient are a major red flag?

A. I believe the DEA, as any pharmacist from their professional judgment, would look at this -- would look at any drug in a profile, that's part of the DUR process, as is required and necessary for a pharmacist to look at all drugs on a profile, how they work together, how they interact together, what potential side effects they could cause, interactions they could cause.

So yes, this is drugs that are used together, but certainly you're looking at the whole profile with all the drugs included.

Q. Does Giant Eagle have a warning system, automated, for a pharmacist alerting it of these three drugs being prescribed to

the same patient, say, within 30 days?

A. So the pharmacy system that we employ is connected with the, in this case, the OARRS system which would show -- so there's two things.

There's the patient profile which would flag these concurrent medications together, but also it would trigger an OARRS review as part of the workflow process which would show any drugs that are not on our profile as well.

Q. What you just described, I believe, tell me if it's fair to say, that's a manual search, right?

A. No, it comes up at the review, the pharmacist review system, in the system. So the system would flag drugs on the concurrent profile within Giant Eagle, but then the OARRS process would show anything outside of Giant Eagle for that patient.

Q. What I'm trying to understand is the first part. Let's separate OARRS out for a second.

What I asked was, was there an

automated flag that would alert a pharmacist within Giant Eagle that those three drugs had been prescribed to the same patient within 30 days of each other?

A. Sure. The system software would flag this concurrent and overlapping drugs and therapy, yes.

Q. How would it flag it?

A. So in the DUR review screen, as pharmacists would check a prescription, it would show that these drugs were -- when they were filled, and what quantities were filled, and that they overlap.

Q. Okay. I want to make sure you and I are on the same thing.

I understand that from a review of the history a pharmacist would be able to manually ascertain that. But what I'm asking is, was there a flag that highlighted or identified the fact automatically that these three had been prescribed together?

MR. BARNES: Objection. Asked and answered at least twice.

But you can answer again.

A. The pharmacy system would flag these drugs together as therapy, right. So when you do your drug utilization review, anything pertinent to that drug that you're filling would show up. So it would show up for the pharmacist, and then they could drill down further if they wanted, but it would show concurrent therapy or overlapping therapy, and then they would be able to make a decision on what they needed to do from there.

Q. I'm not trying to be difficult, but when you say that it shows, are you saying that there's an automated system that highlights the fact that all three of these were prescribed to the same patient?

A. Again, what I'm testifying is that the pharmacist as part of their drug utilization review would review and know that these drugs --

Q. Right.

A. -- are in the profile, and again, they would see what's being used, not used, when it was used, but they would have

that information.

Q. Let's -- I'm still not -- my confusion is still not answered here.

So what I'm trying to distinguish is the pharmacist manually reviewing patient profile history to manually identify those three drugs, or is there a -- during the utilization review, is there a flag that's automatically populated highlighting the fact that these three drugs were prescribed to the same patient within a specific amount of time?

MR. BARNES: Objection. Asked and answered three times. I don't know how many times you need to do it.

MR. MOUGEY: Until I understand.

A. Again, the pharmacist as part of the DUR process would know that these drugs were concurrently either being used or had been used or in the profile. Each time a DUR is done it's looking at all the drugs within the profile.

///

BY MR. MOUGEY:

Q. I'm asking a simple question here, I think.

Is it a manual search that the pharmacist uses to identify those three drugs to the same patient, or is there an automated process at Giant Eagle to identify the combination of these three drugs?

MR. BARNES: Same objection.

A. So as far as where on the screen it shows up or how it shows up, I don't know how it shows up.

But as part of the DUR, the pharmacist would know these drugs are part of the patient's --

BY MR. MOUGEY:

Q. So there's no automated process that identifies the combination of these three drugs, it's a manual search, correct?

MR. BARNES: Objection.

Misstates prior testimony. He said at least times that it flags in the DUR review.

MR. MOUGEY: I'm going to put

you on the stand, Bob.

BY MR. MOUGEY:

Q. So is it a manual process?

MR. BARNES: Keep asking the question over and over again, I will take the stand.

MR. MOUGEY: Maybe we'll get a cleaner answer. If you want me to read back some of the testimony, I'll be more than happy to.

BY MR. MOUGEY:

Q. So is there a flag, or is it a manual review?

A. Again, as far as how it shows up in the system and where it shows exactly in the system, in the DUR process this would show up. Where in the screen, how in the screen, or how the pharmacist would access that screen --

Q. How would it show up?

A. It would show up as a therapeutic -- however it's characterized, these drugs would show up in the DUR review.

Q. Sure. They'd also show up in

the patient profile, correct?

A. Would these drugs show up. Yes, they would be in the profile, yes.

Q. And it would take a manual review in the patient profile for the pharmacist to identify these drugs being prescribed together, correct?

A. I apologize, maybe this is where I'm confused. As far as to do a proper DUR, you would need to look at all the drugs on the profile, whether it pops up on the left screen, the right screen or on the bottom, they would know that these drugs are on the profile and would use their professional judgment on whatever they're filling.

Q. It takes the pharmacist to go back and review all of the drugs being prescribed and perform a manual review of the patient history, the prescription history, to identify these three drugs prescribed in conjunction with each other, correct?

A. I apologize. This manual, you keep saying "manual," I don't understand.

Q. You don't understand the word manual?

A. I certainly understand the word manual. I just don't understand --

Q. What do you think manual means?

A. So in the pharmacy system these drugs would show, you would conduct your DUR however you conduct your DUR, which is required, and you would proceed from there.

Q. Explain to the jury when you say "conduct a DUR," what do you mean?

A. So when I'm filling a prescription, the system would flag any type of drug interactions, underutilization, overutilization, dosing, and then you look at all that information and you conduct your DUR, and then proceed from there.

Q. Number 2, lack of individualized dosing. "Best practice: individualized according to the patient need using the lowest possible beneficial dose."

Did I read that right?

A. Yes.

Q. What does "individualization of

dosing" mean to you?

A. Dosing that is specific to that patient.

Q. And how would the pharmacist at Giant Eagle identify whether that dosing is specific to that patient?

A. Sure. If prescriptions were coming, irrespective of the patient, patient weight, gender, all those things, if the prescriptions were coming exactly the same without -- because weight is a determinant on dosing frequency, so this is are you seeing the same -- are you seeing the same dose and drug irrespective of patient characteristics.

Q. Well, that makes sense to me, except how is the pharmacist supposed to compare all of the different prescriptions for all the different patients from the same prescriber?

A. The pharmacists, using their professional judgment, know their prescribers, know their patients, and if you see -- we know our patients, and we know the prescriptions that we fill, and if there was

something that was regularly and the same, the pharmacist would be able to identify that.

Q. I'm sorry. Go ahead, Mr. Tsipakis.

A. And there's examples of things where -- that I know that I've seen where there's lack of this individualization, which then prompts a further review, or a further screening.

Q. Are some of Giant Eagle's pharmacies open 24 hours?

A. No, they are not.

Q. They're all -- Giant Eagle pharmacies are open, what's the -- 12 hours, 15 hours?

A. Basically anywhere from 10 to 12 hours, from morning to night.

Q. Seven days a week?

A. On the weekends it's only -- it varies, but for the most part we have 8 to 10 stores during the week, 8 to 10, 8 to 8, 9 to 9.

And then on the weekends,

Sunday hours being shorter, but an eight-hour shift, like a 9 to 5 on Saturdays, 10 to 4, 10 to 5 on Sundays.

It varies by area, but shorter on the weekends, longer during the week.

Q. So some of busier stores can have 5 to 600 prescriptions in an hour?

A. Per hour?

Q. I'm sorry, per day.

A. Sure.

Q. And let me redo my math there.

So you testified earlier some of the busier stores do approximately 6,000 prescriptions a week, correct?

A. We have some stores that are that busy, yes.

Q. So that's approximately 8 or 900 prescriptions per day, correct?

A. Roughly, yes.

Q. So again, roughly, 60, 70, 80 prescriptions in an hour at the busiest stores, correct?

A. Correct.

Q. So it's your testimony to this

jury that the pharmacist was going to be able to connect the dots and recall dosage, weight, frequency across prescribers for opiates when some of the busier stores are filling prescriptions to the tune of about one a minute?

MR. BARNES: Object to form.

This is beyond the topics the parties had agreed to. This is -- you're now into topics -- performance metrics topics 9 and 10 which were not supposed to be the subject of this witness's testimony today.

BY MR. MOUGEY:

Q. The system in place, Mr. Tsipakis, is the manual review and recollection of the pharmacist, correct, to identify lack of individualization of dosing, right?

A. So each prescription is individualized -- is screened individually per patient. So when a prescription comes in, the pharmacists use their professional judgment based on that patient, based on

information they have, date of birth, gender, weight. If they need more information, they can contact the physician. So they look at each prescription separately.

Q. Yes, sir. The system in place at Giant Eagle, is your testimony to this jury when looking at individual dosing, is that the pharmacist is supposed to have recall of other prescriptions in the store coming through that from that prescriber to compare weight and frequency over as many as 60, 70, 80 prescriptions an hour, correct?

A. No, not correct. I can tell you --

Q. Go ahead.

A. If there's a pattern that's the same pattern over and over and over again, it's very quickly figured out from the same prescriber.

Q. What's the difference between what I said and what you just said, that the system in place at Giant Eagle is a manual recollection by the pharmacist of the different prescriber prescriptions and the

pharmacist's ability to compare against frequency and size over the course of a period of time, correct?

MR. BARNES: Objection.

Misstates his testimony.

A. The pharmacist each and every time look at the prescription that's in front them, based on the patient that's in front of them, based on what other information they have in front of them, which includes OARRS, and then they're able to decide whether they should proceed with this prescription or not, or ask for more clarification or different information that's needed. So...

BY MR. MOUGEY:

Q. It's not just based on prescription in front of them, sir, it's a comparison of other opiate prescriptions coming in across patients to determine if the dosing is individualized, correct?

A. The fact that a prescriber is prescribing -- again, as it's listed here, these are potential red flags and things for the pharmacist to look at.

After the pharmacist gets that prescription and exercises their professional judgment, they would decide whether it's appropriate in the course of -- whether it was appropriate, not appropriate, more information needed, or whether to fill that prescription or not.

Q. I understand. A little different. The question I asked you was that in order to determine if a physician is issuing the same prescriptions with the same dosing, irrespective of the weight of the patient, Giant Eagle relies on the memory of the pharmacist, correct?

A. That's not correct. You're characterizes as a broad brush the same thing for everybody, and this is -- every prescription is unique to that individual.

Q. We're not talking about prescriptions that are unique to that individual. We're talking about pattern prescribing.

Tell me the tools that Giant Eagle has at the point of fill that the

pharmacist can use to determine if a prescriber is writing the same prescription over and over and over again.

A. And as I just testified, this is a flag for the pharmacist to look at, and then in their professional judgment decide for that patient, for that profile, whether they should fill this prescription or not.

Q. I'm asking about the tools, the tools that Giant Eagle has at the point of fill for a pharmacist to determine if a physician is writing the same prescription for, for example, OxyContin 30 over and over and over again. What tools are available?

A. So if a prescriber was prescribing the same exact medication for every patient, and there was a frequency of those patients, the pharmacist would know that.

Q. And what tools are available to assist the pharmacist identifying that pattern of Oxy 30, for example, over and over and over again?

A. The tools that they have in

front of them is using the computer system and the profiles that they have in front of them, they can use OARRS, they can use -- and again, with their training and experience at their store, they know the prescriptions that come in, they know the prescribers that are in the area, they know what the prescribing habits are for those areas. I mean, they use their professional judgment.

Q. There's no computer search to determine if a prescriber, at the store level, if a prescriber is writing scripts for Oxy 30s over and over again, correct?

A. I'm sorry, can you repeat that, please?

Q. There's no tool, computer tool, at Giant Eagle at the pharmacy level for the pharmacist or staff to identify whether a physician is writing the same script, for example Oxy 30, over and over and over again, correct?

A. Not correct. If the pharmacist wanted to run a utilization report on a physician, they could put that physician --

they could pull up that physician and look at the history of dispenses for that prescriber.

Q. At the store level?

A. Correct.

Q. Using Giant Eagle system at the store level, your testimony to this jury is that a pharmacist or pharmacist staff can organize a physician's prescriptions?

A. What I'm testifying is if a pharmacist wanted to see what prescriptions they had filled from a particular prescriber, they could run a report which would show all the fills for that prescriber.

Q. That's not what I'm asking.

A. You asked me what report was available, and I answered to you, sir, that that's the report that they can --

Q. All they can look at is at the store level, correct, meaning no other Giant Eagle stores, correct?

A. That's a utilization report for their store.

Q. That's right.

So the answer to my question,

Mr. Tsipakis, is yes, that all they can look at is at the store level, not across all 200 Giant Eagle stores, to determine if the same physician is writing prescriptions for Oxy 30s over and over and over, correct?

A. Well, they could use the profiles and dial in to other stores, but the utilization report that they would run would be for their store.

Q. And the dialing in would be store by store, correct, sir?

A. Correct.

Q. So there is not a tool at Giant Eagle for a pharmacist to use to pick up on whether a prescriber is writing Oxy 30s, irrespective of weight, over and over and over again across the Giant Eagle system, correct?

MR. BARNES: Object to form. Misstates his testimony, and asked and answered.

A. You had asked me whether a pharmacist could detect or identify a prescriber writing the same prescription over

and over again. They would know that and see that at their store.

BY MR. MOUGEY:

Q. I didn't ask you whether they would know it by just smoke signals or just remembering the 6,000 prescriptions a week. We'll let the jury decide whether or not a pharmacist can remember 6,000 prescriptions. Focus on the question that I ask.

What I asked you was, sir, is there a tool, computer tool, for a pharmacist to use that would identify if a prescriber is writing, for example, Oxy 30s over and over and over again across all of the Giant Eagle pharmacies?

A. What the pharmacist would do in that situation if they had a concern is bring that concern -- which I didn't see as part of my prep for this deposition, they would have a concern, they would raise that concern, and then we could run global utilization from the chain level.

Q. I'm not asking if they went to the corporate level, if they picked up on the

pattern of the 6,000. Okay?

A. And again --

Q. No, no, no, no, no. Answer my question, sir. Was there -- no, Bob.

Was there a tool, was there a computer-generated tool that would flag if a physician was writing the same prescription, for example Oxy 30, over and over again that covered all the Giant Eagle stores?

MR. BARNES: Objection.

BY MR. MOUGEY:

Q. Other than memory.

MR. BARNES: You cut off the witness's prior answer.

Mr. Tsipakis, if you have more to say in answer to the prior question, please --

BY MR. MOUGEY:

Q. Answer my question, sir.

A. I will do both.

You characterized the stores as 6,000. The 6,000 a week stores that we have, there's a handful of stores that are 6,000. Our average store volume is 2,300 per week.

So the characterization that there's -- is incorrect.

To answer your question, the second part about what the stores have access to, what the stores have access to is the tools that we've discussed, whether it's OAARS, whether it's the profile, whether it's dialing into other stores.

If they have a concern past that, the stores can request more information from the corporate side, and we can run reports, or whatever other information, or getting LP involved, or getting local law enforcement and DEA involved in other pieces.

So they have multiple layers and tools they can look at. And again, using their professional judgment, they decide whether to fill that prescription or not.

MR. MOUGEY: This is getting -- let's take a break.

THE VIDEOGRAPHER: 4:17. We are off the video record.

(Whereupon, a recess was taken.)

THE VIDEOGRAPHER: 4:28, we are on the video record.

BY MR. MOUGEY:

Q. Mr. Tsipakis, this document continues 4, 5, 6, 7, 8, 9, 10 identifying other examples of red flags, correct, sir?

A. Correct.

Q. And the next section on Bates number 94, "Other Red Flags That Should Be Considered Include," and it lists another seven, correct?

A. Page -- I'm sorry.

Yes. Correct.

Q. The section entitled "Documentation." "The pharmacist must document the steps they have taken to verify questionable prescriptions, including any calls to the prescriber, conversations with the patient, medication history review, and notate on the prescription itself or in the computer system utilizing appropriate note fields."

Did I read that correctly?

A. Yes, you did.

Q. Why is it important that the pharmacist document the information that's identified in this section on Bates number 94?

A. The pharmacists in their judgment would document these interactions that they felt was relevant for themselves, or another pharmacist perhaps if they were going to look at it, so -- and just to have, where necessary, to have a documentation of what occurred or what action was taken.

Q. And why is that important?

A. I mean, it depends. So if a physician was called because the dose was changed, the reason for the change, so you'd want someone to know that, or for the next pharmacist that came and saw it, they would understand what happened.

Q. So the documentation helps facilitate communication amongst different pharmacists within Giant Eagle?

A. Sure. Yes.

Q. And would you explain to the jury the different tools available for --

that's a wrong word. Let me do that again.

Would you explain to the jury the different ways a pharmacist can document the information that's listed here on 94, and any other information that you think is relevant or important?

A. Sure. The pharmacists have different places they can document. They can document on the prescription, they can document under the patient record, under the general notes field, or certainly on the prescription hard copy itself.

Q. When you say "document on the prescription," what do you mean?

A. If they wanted to document something, they could pull the hard copy and actually make a prescription -- document something on the actual prescription. They could document it on the digital copy of the prescription in the system under the notes field as well.

Q. So if a pharmacist made a notation on a hard copy of a -- of the prescription, how would that be seen or used

by a pharmacist at other Giant Eagle stores?

A. If it was notated on the hard copy and it was scanned, the physical prescription is scanned, so that would be on the hard copy. Excuse me.

If something is notated on the hard copy, then it's scanned into the system. It's digitally shown in the computer.

Q. It's your testimony that the prescriptions, if there's notations, were scanned in and stored on Giant Eagle's system?

A. What I'm testifying to an example, and to what I just said, if a pharmacist notated something on a prescription, and then scanned that prescription into the system, it would be in the system.

Q. Oh, "if." I missed the word if. It's kind of like etcetera.

So let's -- is it required at Giant Eagle that a prescription with notes on it is scanned in?

A. So, I'm sorry. For billing

purposes -- so I'll give you an example.

For billing purposes, the insurance companies need the hard copy, the notes on the hard copy. For example, if it's a diabetic test strip prescription, it comes in as as directed, and you ask the patient how many times they test, you would notate that on the prescription, and then scan it into the system, so then that record would be there.

Q. I understand. But what I asked you was a little different.

I said, does Giant Eagle require that notes on the back of prescriptions be scanned into the system?

A. If the pharmacist felt something was relevant that they needed to put into the system, they would put it into the system. There's a lot of billing things we do on the back of the prescription that, like as I just mentioned, is for billing purposes.

Q. So the answer to my question is no, it's not required, it's up to the

pharmacist to decide whether to scan it in?
A. There's discretion there, yes.
Q. That wasn't that hard, was it?
Do you know how many -- let's do it this way.
There's multiple notes fields, correct?
A. To my understanding, yes.
Q. And do you know how many characters the notes fields can maintain, like what's the max?
A. I do not know.
Q. Who would know? Mr. Miller didn't know last week, or in his testimony either.
A. There would be someone from our pharmacy IT department that runs our systems that could most likely get that information.
Q. Do you know anyone in particular that would know that information?
A. Well, there could be Joe Lazaro on our team. If we don't know, our software vendor, certainly someone at our software vendor could be -- that could be discussed

with our software vendor, they would know.

Q. You understand that at least some of the note fields can be deleted at the store level, correct?

MR. BARNES: Peter, I'm going to object to this line of questioning. It was covered in the document data 30(b)(6) with Mr. Miller.

And this witness has not been prepared and is not to testify to those topics.

BY MR. MOUGEY:

Q. Well, aren't the notes fields an important part of the system of documenting red flags, Mr. Tsipakis?

A. The notes fields are used for a lot of different things, not just red flags.

Q. I didn't ask if they were used for a lot of things. Mr. Tsipakis, please, hear what I'm asking.

I said, the notes fields are an important part of documenting due diligence on red flags, correct?

A. Correct. But I'm also saying

it's not exclusively only used for that.

Q. I didn't ask you if it was exclusive. I didn't suggest it was. I just said it was part. Did you hear the word "part"?

A. Yes, sir, I did.

Q. Okay. So the notes fields are the primary place that the pharmacist can record their due diligence on red flags, correct?

A. It's a place they could document that.

Q. Well, we have the notes fields and we have the back of a prescription, right, the hard copy prescription, correct, sir?

A. Not all red flags require documentation or for it to be written out.

Q. Didn't ask you if it did. I asked you where.

So we have the notes fields and the back of a prescription. Where else can due diligence be recorded on a red flag at Giant Eagle?

A. Due diligence could be also an e-mail to their supervisor about a concern, to the compliance department. There's -- there's a lot of different places they could document a concern.

Q. Well, where else could it be? So we have e-mails, we have notes, we have back of a hard copy prescription. Where else can due diligence be recorded on red flags?

A. You said the e-mails, because there's certainly e-mails back and forth with our LP department.

So e-mails, the notes field, and the back of a prescription, those would be the primary. Also notes to other pharmacists or how they communicate between each other, sometimes they can leave notes as well outside of the system.

And there's no law that requires where they put their notes or their documentation. I mean, the whole point of the notes is to communicate pertinent information if necessary.

Q. So let's go back to the

document in front of you, sir.

Do you see under "Documentation" it says, "The pharmacist must document" -- correct?

A. Correct.

Q. -- "steps they have taken to verify questionable prescriptions," correct?

A. Correct.

Q. And then the paragraph goes on to give specific examples, correct?

A. Yes. Correct.

Q. It says there's two places to record the documentation, one is on the back of the prescription itself, correct?

A. Yes.

Q. And the second is the computer system utilizing appropriate note fields, correct?

A. Correct.

Q. So Giant Eagle's own guidelines give note fields and notations on the hard copy prescription, correct?

A. Correct.

Q. And the reason for documenting

the, quote unquote, due diligence is at least in part to help communicate information amongst pharmacists at Giant Eagle, correct?

A. Correct.

Q. Now, let's go back to the question I asked a few minutes ago.

Did Giant Eagle at any point in time have issues with the size of the note fields and pharmacist notes having to be deleted because the field was filled up?

MR. BARNES: Objection.

This was covered in a separate deposition. This is not a topic for this witness.

A. I'm not aware about the limitation or deleting of any notes. Not aware of that.

BY MR. MOUGEY:

Q. You would agree that if, in fact, the notes fields were limited, that that would adversely impact Giant Eagle's ability to maintain its system on red flags?

MR. BARNES: Objection. Calls for a hypothetical. There's no

foundation. He said he's not aware of limitations or deletions.

A. As far as what information, the note fields are there, you use the note fields as they're designed, and again, I don't -- I'm not privy to the limitations or character limits on those, or if they were deleted, or what impact that would or wouldn't have.

BY MR. MOUGEY:

Q. Mr. Tsipakis, if you could please open up the folder that I've marked as 1348.

MR. BARNES: HBC-1348?

MR. MOUGEY: HBC, yes, 1348.

(Whereupon, Tsipakis Exhibit Number 2 was marked for identification.)

BY MR. MOUGEY:

Q. Let me know when you have it, sir.

A. Does it begin with Giant Eagle Pharmacy Controlled Substances Manual?

Q. Yes, sir.

A. Okay. I have it.

Q. Okay. Great.

Does Giant Eagle repeatedly advise its pharmacists and staff that they need to perform due diligence on red flags?

A. We reinforce it, yes.

Q. When you say "reinforce it," you reinforce the importance of performing due diligence on red flags, correct?

A. Well, all due diligence, but certainly including red flags, yes, of course.

Q. And other than taking a note on the back of a hard copy prescription that the pharmacist has discretion whether to scan or not, the only other place to record that due diligence is in the notes fields, correct, sir?

A. That's not correct. The pharmacist, and also what I saw in preparing for this testimony, there was numerous pharmacists that would have a concern or a diligence question that would be an e-mail to -- whether it's to loss prevention, the

compliance team, to their direct supervisor, so those, in essence, are communicative -- modes of communication as well.

Q. And in your preparation for today, how many examples of recording due diligence did you see in e-mail traffic? Ten or less?

A. I'm not sure of the exact, but somewhere there.

Q. So over a period of approximately 15 years, you've seen ten or less examples of due diligence being recorded in e-mails, correct?

MR. BARNES: Objection.

You've asked a misleading question.

A. What I said is I saw snippets of those examples that are not exclusive of all the information that's there or exists. It's the ones that I had personally seen.

BY MR. MOUGEY:

Q. So what is your definition, Mr. Tsipakis, of what due diligence is?

A. Due diligence is -- it

relates -- in relation to filling a prescription?

Q. Red flags, yes, sir, for opiate prescriptions which is what I think we're talking about.

A. So the due diligence would be to, as you're assessing a prescription and you're going through all of the normal procedures to validate a prescription, in addition to doing your due diligence on therapy, drug interactions, the drug, the dosing, the quantity, the patient, the characteristics of the patient, so you take all those things into consideration.

And if there is any red flags -- again, not exclusive, but if a red flag, and one red flag to one pharmacist may not be the same red flags to another, based on experience or knowledge of the patient or the prescriber, you would exercise caution of care for all those things. And then if you were satisfied with your professional judgment, you would fill that prescription.

Q. And the fact that red flags to

one pharmacist to another may be different things are reasons why Giant Eagle puts together guidelines and manuals to help educate the pharmacists and staff, correct?

A. It helps reinforce to their staff. Pharmacists, again, have a responsibility to do their due diligence in their professional judgment. These are -- these guidelines are help to make aware, to reinforce good practice.

Q. And Giant Eagle provides the tools, the reinforcement on these guidelines and manuals to help educate it's pharmacists and staff, correct?

A. It's not only through these. Pharmacists have continuing education, they have -- what we do here is we help put things together in a nice, neat place. But again, it's not exclusive of all the information and training that our pharmacists have and continue to get from a continuous perspective.

Q. Let's turn to Bates number 55, which is the third page in under "Statement

of Purpose."

A. 655, so the last digits?

Q. Yes.

MR. BARNES: I'm going to interject an objection here, Peter. There's no foundation that this document was actually used as a Giant Eagle manual. In fact, I think the testimony from others is to the contrary.

BY MR. MOUGEY:

Q. That would be great to know. Well, let's do it this way.

So is Mr. Barnes' testimony accurate that this manual was not used at Giant Eagle?

A. I don't know when and how this was used at Giant Eagle.

Q. Do you know whether it was used? Let's start there.

A. I do not.

Q. So today, in preparation for your testimony about the systems in place at Giant Eagle to identify red flags, conduct

due diligence, you don't know whether or not this document, which we'll mark as Exhibit 2, was enforced at Giant Eagle?

A. What I'm testifying is I haven't seen this document. Doesn't mean that it was or wasn't used at Giant Eagle.

Q. I think I can -- Mr. Barnes, I can accept your representation that this document was not used at Giant Eagle?

MR. BARNES: I interpose an objection, Pete. There's no foundation to ask questions related to this document because there is no foundation that it was actually used. I mean --

MR. MOUGEY: You brought a witness today that's going to testify about systems at Giant Eagle and red flags in regards to opiates, and I'm sitting here looking at a controlled substance manual, was this used at Giant Eagle or wasn't it?

I think you're kind of in Hobson's choice here, either the

witness isn't prepared to answer the question and you need to go back and do a little homework, or --

MR. BARNES: I think there's maybe a reason why he wasn't shown it, and it's because, if you read the George Chunderlik deposition from track 1, that that's what I'm getting at.

If you want to take a break for a minute, I can verify one way or the other.

MR. MOUGEY: That will be great. That will save us a little time. That will be great.

MR. BARNES: Let's go off the record for a second.

THE VIDEOGRAPHER: 4:49. We're off the video record.

(Whereupon, a recess was taken.)

THE VIDEOGRAPHER: 5:03. We are on the video record.

///

BY MR. MOUGEY:

Q. Mr. Tsipakis, we have Exhibit 2 in front of you, sir, entitled "Giant Eagle Pharmacy Controlled Substances Manual."

Have you seen this document before, sir?

A. Prior to today I had not seen it, no, but...

Q. And what do you know about this document, sir?

A. So what I was able to ascertain was this document was an internal draft that our compliance department was working on that never got published or distributed outside of the compliance department. It was a draft that they were working on. That basically the Controlled Substance Guidelines document is what was published and used for the stores, not this.

Q. So the Exhibit 1, the three to four-page document, was the document that was used at Giant Eagle to educate their pharmacy staff to address red flags and due diligence, correct?

A. It was not the only. Help educate, it's not the primary -- it wasn't the only thing, but it was one of the things, yes.

Q. And this, I believe, 40-plus page document that you have in front of you marked as Exhibit 2 was drafted by compliance but not used?

A. That is correct. That is my understanding, yes.

Q. So, sir, if you'd turn to Bates number 58 of this document. All of the detail about due diligence on Bates number 58 was never used to help educate the pharmacist and pharmacist staff related to controlled substance and opiates?

A. Give me a second to just look at it.

This is information pulled out of the pharmacist manual, the DEA pharmacist manual, but this wasn't used in this form, no.

Q. So as you flip through this document, for example on page 62 titled --

Bates number 62, "Filling Prescriptions for Controlled Substances - Due Diligence," you can see the next several pages are all about red flags and due diligence, this was never used to help educate Giant Eagle's pharmacists and staff regarding controlled substances and opiates?

A. My understanding is this was a draft that wasn't used or disseminated to our pharmacists.

Q. If you turn to page 64, compliance at Giant Eagle took the time to break out the red flags into different segments of the prescription fill process, correct?

A. I'm sorry, page -- you said 64?

Q. Yes, sir.

A. Okay. Page 64, I've read it.

Q. Yes, sir.

For example, page 64, "Red Flags for Drop-Off," none of this educational material was ever used at Giant Eagle, correct?

A. In this exact form, no. The

concepts here have been used, but not this exact document.

Q. Bates number 67, "Red Flags For Data Entry," all of this information was never used to educate the pharmacists, correct, sir?

A. I'm just reading it.

Again, this is information from multiple sources that were listed here, but in this form was not used.

Q. Yes, sir. It's almost 40-plus pages, and this page specifically, Bates 67, were red flags specifically just for the data entry piece of the filling a prescription for controlled substances, correct?

A. As it's written, it says, "Red Flags For Data Entry." That's what it says.

Q. Bates number 68 is another section written by compliance, "Red Flags For Fill" related to controlled substances, correct?

A. "Red flags For Fill," that is the title, yes.

Q. And you can see under each one

of these titles, if you want to flip back on the next couple pages, compliance is stressing the importance of due diligence, correct, sir?

MR. BARNES: Object to form. The witness has already testified this document was not -- was in draft form and was not effectuated.

BY MR. MOUGEY:

Q. Bates number 68, compliance is stressing due diligence, correct?

MR. BARNES: Same objection.

BY MR. MOUGEY:

Q. Right underneath the "Red Flags For Fill," correct, sir, "additional due diligence may be necessary"?

A. That is what it says, correct.

Q. Number, Bates number 69, there's an entire section with examples of due diligence that could be used to determine all of the different red flags, correct, sir?

MR. BARNES: Same objection.

A. It lists -- I'm sorry, it lists due diligence and examples of such.

BY MR. MOUGEY:

Q. On Bates number 70, "Red Flags For Final Verification," another stage in the prescription fill process, correct?

A. Correct.

Q. And underneath the title, compliance is again pointing out about different kinds of due diligence, correct?

MR. BARNES: Same objection. Move to strike all of this line of questioning. Asking about a document that was never finalized. It's a draft document, and your questions assume otherwise falsely.

BY MR. MOUGEY:

Q. Correct, Mr. Tsipakis?

A. I'm sorry, can you repeat the question, please, sir?

Q. Yes, sir.

Underneath the title, compliance is again pointing out different kinds of due diligence in the document, correct, sir?

MR. BARNES: Same objection.

Same motion.

A. It lists that, yes.

BY MR. MOUGEY:

Q. Bates number 71, more "Red Flags For Will Call," correct?

A. Examples listed, yes.

Q. And again, examples of due diligence compliance thought was important, correct?

A. Examples of things to look for, yes.

Q. Do you know why the document that compliance took time to draft that's over 40 pages long about red flags, controlled substances, opiates, due diligence, why this was never published to Giant Eagle employees?

A. I do not.

Q. If you look at Bates number 55 under "Statement of Purpose" in the very beginning of the doc, do you agree with compliance in this document that it drafted "The abuse of prescription drugs is epidemic in the United States"? Does Giant Eagle

agree with that?

MR. BARNES: Object to form. Move to strike. Same bases.

A. As far as the statement of purpose, there is certainly -- I can't say that it's an epidemic or a pandemic. There's certainly concern.

BY MR. MOUGEY:

Q. Giant Eagle doesn't agree with its compliance department in the draft of this document that prescription drugs is an epidemic in the United States?

MR. BARNES: Hold on. Object. Pete, what topic are you covering right now? You're asking him about whether he agrees with compliance department in a draft document that was never finalized about the opioid epidemic. I don't even see that topic on here. Let alone, the lack of foundation for any of these questions from a document that was never finalized and utilized and which you received in Word form

knowing that it's a draft.

So we object to this whole line of questioning.

MR. MOUGEY: I understand.

BY MR. MOUGEY:

Q. Mr. Tsipakis, does Giant Eagle agree with this document that was drafted by compliance that "The abuse of prescription drugs is epidemic in the United States"?

MR. BARNES: Objection.

Outside the topics, lack of foundation.

A. Again, not knowing who drafted this or how they drafted this, certainly it was put together. If you're asking me that's what it says, yes, that's what it says.

BY MR. MOUGEY:

Q. No, what I'm asking you, does Giant Eagle agree or disagree that prescription drugs are an epidemic in the United States?

MR. BARNES: Same objection.

Outside topics, lack of foundation.

A. Giant Eagle agrees that

prescription abuse is certainly a concern.
BY MR. MOUGEY:
Q. A concern, but doesn't rise to the level of an epidemic, sir?
MR. BARNES: Same objection.
A. Again, that's what it says, Giant Eagle agrees that it's a concern.
BY MR. MOUGEY:
Q. But Giant Eagle doesn't agree that it's an epidemic in the United States for prescription drug use, opiates?
MR. BARNES: Same objection.
A. As far as whether it's an epidemic or -- I'm not an epidemiologist, I can't tell you whether that is or it isn't.
BY MR. MOUGEY:
Q. I mean, I have a concern that my son stayed out last night past his curfew, I mean, that's not the same as an epidemic.
Sir, does Giant Eagle believe that there is an epidemic in the United States associated with prescription drugs, and more specifically opiates?
MR. BARNES: Objection.

Outside the topics, lack of foundation.

A. Again, Giant Eagle's position is there's a concern, there's a concern, certainly.

BY MR. MOUGEY:

Q. A concern like my son staying out past his curfew, or a concern that "Deaths from prescription drug overdoses exceed deaths from auto accidents," as in the third sentence of this document drafted by compliance?

MR. BARNES: Same objection.

BY MR. MOUGEY:

Q. Does Giant Eagle agree and understand that deaths from prescription drug overdoses exceed deaths from auto accidents?

MR. BARNES: Same objection.

A. That is what it says. I don't have any way to substantiate whether that's true or not true.

BY MR. MOUGEY:

Q. If that is true, wouldn't this have been good information for pharmacists

and pharmacy staff to have, as you call it tools, to make sure that pharmacists understood the severity of overdose deaths in the United States?

A. I believe pharmacists understand that very clearly.

Q. But you're not, on behalf of Giant Eagle, willing to agree that prescription drug abuse is epidemic in the United States?

MR. BARNES: Same objection.

A. Giant Eagle agrees that it's a concern, and things to be vigilant against, yes.

BY MR. MOUGEY:

Q. In the last sentence in that paragraph, "Over 20 percent of Americans admit to abusing prescription drugs and they are now the recognized 'gateway' drugs to heroin and other illegal drug abuse."

Sir, do you think it's important in the education process of your pharmacists and staff that they understand that prescription opiates are gateway drugs

to heroin and other illegal drug abuse?

MR. BARNES: Object to the form of the question. It's outside the 30(b)(6) topics, and there's lack of foundation with respect to this document.

A. I can't substantiate the numbers that are listed there, whether it is or isn't.

BY MR. MOUGEY:

Q. But if it was accurate, somebody from compliance had put the time in to draft this 40, 45-page document, wouldn't you believe that that would be important information for your pharmacists to know, that prescription drugs are recognized as gateway to heroin and other illegal drug abuse?

MR. BARNES: Same objection. Outside the 30(b)(6) topics, lack of foundation, asking the witness to speculate as to what's in a draft document about something that he clearly has no knowledge about.

A. I can't speculate on the accuracy of that statement or not. I know what it says, but I certainly cannot take a position on it.

BY MR. MOUGEY:

Q. I'm just simply asking you, sir, if that is an accurate fact as drafted, put together by your compliance department, that wouldn't the fact that prescription drugs recognized -- are recognized as gateway drugs to heroin be important for your staff people to know at Giant Eagle?

MR. BARNES: Objection. Outside the 30(b)(6) topics, lack of foundation. You don't even know where the source of this information is.

A. Again, I know what it says there. But recognized, recognized by whom, is just a very -- there's no way to substantiate where this came from, whether it's accurate.

BY MR. MOUGEY:

Q. I'm not asking you -- I asked you, sir, to assume this fact as accurate,

would this be important for your pharmacists and staff to know that prescription opiates are recognized as gateway drugs to heroin and other illegal drug abuse?

MR. BARNES: Objection. Outside the scope of the 30(b)(6) topics, asking the witness to speculate, lack of foundation with respect to this document.

A. Only if our pharmacists understand what the abuse of prescription drugs are, the importance of it, the role that they play in preventing it, and certainly helping our patients get the medication they need, the legitimate patients and legitimate prescriptions for pain management or any other condition.

BY MR. MOUGEY:

Q. In 2013 when this document was drafted, doesn't Giant Eagle believe it was important to arm its pharmacist and their staff with as much information as possible to recognize red flags?

MR. BARNES: Same objection.

Lack of foundation, including the allegation concerning the date of preparation. I don't think there's any foundation related to that. It's outside the 30(b)(6) topics.

MR. MOUGEY: Check your metadata.

BY MR. MOUGEY:

Q. Go ahead, Mr. Tsipakis.

A. I was going to ask you that. I don't know when the date of this was as well. I was going to say that.

Certainly the information that's listed here is already in many of our other documents, including our Controlled Substance Dispensing Guidelines and the DEA manual that our stores have, as well as continuing education that the pharmacists receive, and other things that they would be exposed to. And also topics covered at staff meetings, quarterly meetings, LP meetings that we have with our staff. So many of this information is included in those activities.

Q. Doesn't Giant Eagle believe

it's important to consolidate information from various sources, including them in one easy to review piece that's accessible internally to help combat prescription drug abuse issues within their community? You don't think that would be helpful?

A. Certainly when you consolidate and put things together in one place it's helpful, but also would give you the false security that this is the only document and this is the only thing you should be looking at.

So I believe it's helpful, it's not exclusive. And certainly, the pharmacists with their knowledge, their training, their continuing education, which these topics are continually covered, and in many cases in many states continuing education required on these topics.

Q. So Giant Eagle, instead of developing a system in one place with the concern that there would be a false security, decided to parcel out information in a three to four-page guideline, a couple pages of

continuing education and some e-mails and some meetings, and parcel it out to combat against the false security of having it all in one place?

MR. BARNES: Object to form.

BY MR. MOUGEY:

Q. That's your testimony to this jury?

MR. BARNES: Object to form.

Misstates his testimony.

A. Again, as I just testified, I don't know the purpose, or where this draft, or what it was used for, or what it was put together for. All I can tell you is that it was not used. A draft was put together, time was put into it certainly, but it was not distributed or used with our pharmacists.

BY MR. MOUGEY:

Q. Doesn't that make you wonder why this wasn't used, Mr. Tsipakis, that this was put together? Was it a handy consolidation of 40-plus pages of red flags and due diligence information, and then it wasn't published?

A. Again, I can't speculate why it was not used. I can tell you by leafing through this document that I hadn't seen up until today, a lot of this information -- all of this information is absolutely covered in different places, and on our intranet, and in the training and continuing education that our pharmacists receive externally and internally.

Q. Do you know who Nancy Springer is?

A. I do not.

Q. You agree that Giant Eagle was obligated to have a system in place to prevent against diversion, correct?

A. Giant Eagle is obligated to have safeguards to help prevent diversion, yes.

Q. And part of the system is ensuring that its 30,000 plus employees that are -- whichever portion are involved in dispensing, are well educated, correct, sir?

A. The pharmacists receive professional training, are licensed by the

Board of Pharmacy, and have continuing education requirements, and use their professional judgment, and are continually getting educated from external sources, internal meetings and calls, and things that we provide.

But it's a continual process. It's not a once and done. They're constantly getting different things from different sources, all in the aspects of making sure that they have everything that they need and the tools available. In addition to us continually over the years providing information, integration, to allow them to be able to do their job effectively and efficiently.

Q. Sir, can you point me to any document in preparation for today that comes anywhere near Exhibit Number 2 with all of the substantive information about red flags and dispensing information -- I'm sorry, red flags and due diligence related to controlled substances, more specifically opiates?

MR. BARNES: Objection. Asked

and answered multiple times.

A. There's not one document that we have. All this information that's listed here is all available on a different portion, including our pharmacy intranet where pharmacists have all this information that they can go look up and look at.

For example, there's here is how to do an order, there is here is how to fill out a DEA 222 Form, all of that information is available and organized on our pharmacy intranet.

BY MR. MOUGEY:

Q. All this information about red flags and due diligence at specific points of time in the fill process of an opiate prescription, your testimony to this jury is that that's available at other places at Giant Eagle?

A. That's not what I said. What I said is --

Q. No, that's not what you said, and that's exactly why I asked, sir. I'm not asking about form -- 222 Forms.

I'm asking you, sir, is information about due diligence and red flags filling opiate prescriptions in any place in Giant Eagle's system all combined in one document like it is here?

A. The document that we have is in our controlled substance dispensing guidelines.

Q. And that's three, four pages, correct, sir?

A. I'm not sure the exact number of pages, but that sounds about right.

Q. Less than five? Are you comfortable with that?

A. Yes, sir.

MR. MOUGEY: I don't have any further questions, other than the 45 minutes that we've reserved. Thank you.

MR. BARNES: Okay. Pete, we'll get back with you on the 45-minute followup.

MR. MOUGEY: Sounds good. Thank you.

MR. BARNES: Okay.

THE VIDEOGRAPHER: 5:27 p.m. We are off the video record for today.

(Whereupon, the deposition was adjourned.)

CERTIFICATE

I, MAUREEN O'CONNOR POLLARD, Registered Diplomate Reporter, Realtime Systems Administrator, and Certified Shorthand Reporter, do hereby certify that prior to the commencement of the examination, JAMES G. TSIPAKIS, was remotely duly identified and sworn by me to testify to the truth, the whole truth, and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a verbatim transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Maureen O Pollard

MAUREEN O'CONNOR POLLARD
NCRA Registered Diplomate Reporter
Realtime Systems Administrator
Certified Shorthand Reporter
Notary Public

Dated: March 22, 2021

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ACKNOWLEDGMENT OF DEPONENT

I, _____, do Hereby certify that I have read the foregoing pages, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

_____

JAMES G. TSIPAKIS DATE

Subscribed and sworn
To before me this
_____ day of _____, 20____.

My commission expires: _____

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